

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

FIRE FIGHTERS LOCAL 1697 INTERNATIONAL
ASSOCIATION OF FIRE FIGHTERS, AFL-CIO,

Complainant,

vs.

CITY OF MENOMONIE, WISCONSIN,

Respondent.

Case XX
No. 17871 MP-352
Decision No. 12674-A

Appearances:

Mr. Ed Durkin, International Vice President, International Association of Fire Fighters, for the Complainant.
Mr. Reid W. Klopp, Assistant City Attorney, for the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above entitled matter; and the Commission having appointed Dennis P. McGilligan, a member of the Commission's staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5), Wisconsin Statutes; and hearing having been held at Menomonie, Wisconsin, on May 29, 1974, before the Examiner; and the Examiner 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 Order.

FINDINGS OF FACT

1. That Fire Fighters Local 1697 International Association of Fire Fighters, AFL-CIO, referred to herein as the Complainant, is a labor organization having offices at Box 431, Menomonie, Wisconsin; that Jeffrey A. Reames is President of the Complainant; and that Gary D. Quilling is a member of the Complainant.

2. That the City of Menomonie, Wisconsin, referred to herein as the Respondent, is a Municipal Employer having its principal offices at City Hall, 800 Wisconsin Avenue, Menomonie, Wisconsin; that, among other municipal services, the Respondent maintains and operates a Fire Department; that James Berg is employed by the Respondent as the Chief of the Menomonie Fire Department; that George Langmack is employed by the Respondent as its City Manager; and that Dave Hunt is employed by the Respondent as a Parking Meter Repairman under an individual employment contract calling for payments to Hunt of \$155.00 per month (\$1,860.00 per year).

3. That, at all times pertinent hereto, the Respondent has recognized the Complainant as the exclusive collective bargaining representative for all firefighting personnel employed by the Respondent, excluding supervisors.

4. That on November 5, 1973, City Manager Langmack sent the following Memorandum to Hunt and Fire Chief Berg regarding "Meter Maintenance":

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"It is important that the City prepare for the continued maintenance and repair of parking meter heads.

Although Dave only gets sick on rare occasions, we must recognize that within the next 30 years he is going to either resign or die.

I want the Fire Department to begin learning about the meters and the City should begin to acquire some of the necessary tools and equipment. There is no better-informed mechanic than Dave, so he gets the job of teacher.

Dave will perform this maintenance service for the City as long as he wants, but I do insist that we have a back-up."

and that the Respondent never sent the above-noted Memorandum or made the contents therein known to the Complainant.

5. That, prior to November 5, 1973, all repair and maintenance of parking meters owned or operated by the Respondent had been performed by Hunt or other persons outside of the aforesaid collective bargaining unit; that rates of compensation for the performance of parking meter repair work had never been a subject of collective bargaining between the Complainant and the Respondent; that, on or about February 1, 1974, Fire Chief Berg asked three members of the aforesaid collective bargaining unit to assume additional on-duty time duties, consisting of training in the repair and maintenance of parking meters and that one firefighter, Gary D. Quilling, replied to Berg's request as follows:

"... as long as it didn't interfere with anything from the Union ... but if the Union objected then, of course, I couldn't." 1/

6. That subsequently, Hunt, at the request of the Respondent, trained these employees in repairing parking meters while on duty as firefighters; and that these employees actually did repair and maintenance work on parking meters while on duty as firefighters.

7. That upon learning of the above-noted series of events the membership of the Complainant discussed the matter at the next meeting of the Complainant; that immediately thereafter the Complainant sent the following communication to the Respondent:

"Approximately, Feb. 1, three members of Local 1697 were requested by the City to learn how to repair City parking meters. This was to enable them to do such work while on duty as firefighters and as such is an additional responsibility and duty.

It is the position of Local 1697, that if any firefighters in our bargaining unit are to do this additional duty, they should be paid some type of compensation extra for that work.

Therefore, since this is a change in working conditions, Firefighters Local 1697 formally requests the City of Menomonie to enter into negotiations as to the rate of pay for firefighters involved in meter repair.

Failure by the City to enter into negotiations and still have our men do this duty will force us to file a prohibitive practice suit under 111.70(3) (a) 4."

1/ See Transcript at page 11.

and that the Respondent did not in any manner answer or respond to the above-noted letter from the Complainant.

8. That the Respondent did not discuss with the Complainant at any time or offer to negotiate and did not negotiate on the matter of pay rate for the aforementioned parking meter repair work.

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

CONCLUSIONS OF LAW

1. That the City of Menomonie, Wisconsin is a Municipal Employer within the meaning of Section 111.70(1)(a) of the Municipal Employment Relations Act; and at all times material herein, James Berg, George Langmack and Dave Hunt were agents of said Municipal Employer, acting within the scope of their authority.

2. That a unit of all firefighting personnel employed by the City of Menomonie, 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)(a)2a. of the Municipal Employment Relations Act; and that, at all times material herein, Fire Fighters Local 1697 International Association of Fire Fighters, has been, and is, the exclusive representative of the employees in said unit, for the purposes of collective bargaining within the meaning of Sections 111.70(1)(d) and 111.70(4)(a)1 of the Municipal Employment Relations Act.

3. That the request of Complainant to bargain concerning rates of pay for training in parking meter repair work or the performance of parking meter repair work to be assigned to members of the aforesaid collective bargaining unit is a matter of wages, hours, and conditions of employment within the meaning of Section 111.70(1)(d), 111.70(2) and 111.70(3)(a)4 of the Municipal Employment Relations Act.

4. That the 1973-1974 collective bargaining agreement between the Complainant and the Respondent does not relieve the Respondent of the duty to bargain on the matter of wages to be paid to employees of whom additional duties are assigned during the life to said agreement; and that the Respondent, City of Menomonie, by refusing to bargain with Fire Fighters Local 1697 International Association of Fire Fighters, concerning rates of pay for training in parking meter repair work or the performance of parking meter repair work by members of the aforesaid collective bargaining unit, has refused, and continues to refuse, to bargain collectively with the Fire Fighters Local 1697 International Association of Fire Fighters, and has committed, and is committing, a prohibited practice within the meaning of Section 111.70(3)(a)4 and 1 of the Municipal Employment Relations Act.

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

ORDER

IT IS ORDERED that the City of Menomonie, its officers and agents, shall immediately:

1. Cease and desist from:

(a) Interfering with, restraining or coercing its employees in the exercise of their rights guaranteed by the Municipal Employment Relations Act.

- (b) Refusing to bargain collectively with the Fire Fighters Local 1697 International Association of Fire Fighters as the exclusive representative of all firefighting personnel in the employ of said Respondent.

2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:

- (a) Upon request, bargain collectively with Complainant with respect to pay rate for the additional duty of training for the performance of parking meter repair work assigned after 2/1/74 to employees in the collective bargaining unit consisting of all firefighting personnel employed by the Respondent, excluding supervisors.
- (b) Notify all Fire Department employees, by posting in conspicuous places on its premises, where notices to all such employees are usually posted, copies of the notice attached hereto and marked "Appendix A". Appendix A shall be signed by the City Manager.
- (c) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin, this 15th day of August, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Dennis P. McGilligan
Dennis P. McGilligan, Examiner

APPENDIX "A"

NOTICE TO ALL FIRE DEPARTMENT EMPLOYEES

Pursuant to an Order of an Examiner of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Municipal Employment Relations Act, we hereby notify our employees that:

1. WE WILL NOT refuse to bargain collectively with Fire Fighters Local 1697 International Association of Fire Fighters, AFL-CIO, with respect to pay rate for the additional duty of parking meter repair work to be imposed upon the members of the aforementioned collective bargaining unit by the City of Menomonie as of approximately February 1, 1974; or in any other manner, interfere with, restrain or coerce our employees in the exercise of the rights guaranteed by the Municipal Employment Relations Act.

Dated this _____ day of August, 1974.

CITY OF MENOMONIE

By _____
George Langmack, City Manager

THIS NOTICE MUST REMAIN POSTED FOR SIXTY (60) DAYS FROM THE DATE HERE AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY MATERIAL.

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The instant complaint was filed on April 25, 1974. Hearing was held on May 29, 1974 and the transcript thereof issued on June 14, 1974. Complainant filed a brief with the Examiner on July 15, 1974; Respondent filed its brief with the Examiner on July 22, 1974.

The facts material to the instant decision are set forth in the Findings of Fact. There were no issues of material fact. At the hearing, the Complainant stated that its complaint did not, and was not intended to, raise any issue concerning the Respondent's right to assign to employees in the aforementioned collective bargaining unit for completion during their normal tour of duty any and all duties which the Municipal Employer deems appropriate. The only issue raised by the pleadings is whether the Respondent has a duty under the Municipal Employment Relations Act 2/ to bargain collectively as to whether the Respondent should pay an additional rate of pay (above base salary) to those employees who are assigned to perform the duties of meter repair during a portion of their normal tour of duty. Complainant asserts that the Respondent has such a duty; the Respondent asserts that it does not.

The Respondent has a duty to bargain in good faith with respect to "wages, hours and conditions of employment". 3/ The matter of premium pay for additional duties assigned to employees concerns a mandatory subject of bargaining. 4/ The Examiner concludes that the instant subject of additional rates of pay for meter repair performed by the firefighters involves a form of "wages". The Examiner concludes, further, that the Respondent has a duty to bargain over the instant form of wages.

The Respondent argues that the subject at issue is "a right reserved to management and to their direction." 5/ In support of that proposition, the Municipal Employer cites Section 111.70(1)(d) of the Municipal Employment Relations Act which reads as follows:

"(d) 'Collective bargaining' means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employees, to meet and confer at reasonable times, in good faith, with respect to wages, hours and conditions of employment with the intention of reaching an agreement, or to resolve questions arising under such an agreement. The duty to bargain, however, does not compel either party to agree to a proposal or require the making of a concession. Collective bargaining includes the reduction of any agreement reached to a written and signed document. The employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the employees. In creating this subchapter the legislature recognizes that the public employer must exercise

2/ Section 111.70 of the Wisconsin Statutes, et seq.

3/ See Sections 111.70(1)(d) and (3)(a)5 of the Municipal Employment Relations Act.

4/ Village of Shorewood (11716) 3/73.

5/ See Transcript at page 9.

its powers and responsibilities to act for the government and good order of the municipality, its commercial benefit and the health, safety and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to public employees by the constitutions of this state and of the United States and by this subchapter."

In citing the above subsection in support of its position, the Respondent relies upon the last two sentences thereof. A careful reading of the proviso attached to each of those sentences reveals, however, that said subsection does not support the Respondent's position. The Complainant has not attempted to impose blanket limitations upon the Respondent's decision-making in the area of work assignments. Instead, Complainant requests the Commission to declare that the Respondent has a duty to bargain with respect to wages which individuals assigned to particular duties are to receive. Complainant has not attempted to prevent the Respondent from acting as it sees fit for the government and good order of itself and in the public interest, but rather Complainant seeks only to exercise its members' right to bargain collectively 6/ about "wages, hours and conditions of employment."

The Respondent contends that certain provisions of the collective bargaining agreement which was in effect throughout the year of the alleged violation obviated the necessity to bargain concerning additional rate of pay for firefighters doing meter repair work before imposing said duties. In particular, the Respondent contends that the instant dispute is governed by the procedures set forth in Article IV, Section 1, Subsection F of the contract and not under Section 111.70 of the Wisconsin Statutes. That article is the "Management Rights" clause of the collective bargaining agreement in effect between the two parties and reads as follows:

"To create new positions or divisions and to introduce new or approved operations or work practices and to permanently or temporarily terminate, consolidate, transfer or modify existing positions, divisions, operations and work practices."

Here again, the Complainant is not contending that the Respondent does not have the authority to institute "new work practices." It merely contends that Respondent has a duty to bargain concerning the wages which individuals assigned to particular duties are to receive, and as such the Complainant seeks to exercise its employees' rights to bargain collectively 7/ about "hours, wages and conditions of employment."

The Respondent also cites the language of Article IV, Section 1, Subsection C:

"To establish or alter the number of shifts, hours of work, work schedules, vacation schedules, methods, processes and means and ends."

And Article IV, Section 1, Subsection A:

"To determine the mission of the department, set standards of service to be offered to the public, exercise control and discretion over its organization and operations and to utilize personnel in the most appropriate and efficient manner possible."

to support its position. However, the Complainant is not challenging Respondent's authority as noted in the above two sections of the contract. It merely maintains that the Respondent has a duty to bargain concerning

6/ The right of municipal employees to bargain collectively is set forth in Section 111.70(2).

7/ Ibid.

the rate of pay which individuals assigned said duties are to receive, and as such the Complainant seeks to exercise its members' rights to bargain collectively as noted above.

Respondent also contends that Article XXIII of the same contract agreement does not provide for negotiations over this type of dispute. That article provides, concerning negotiations:

"Section 1. The party requesting negotiations on the terms of a successor agreement shall notify the other party in writing of its request by July 1 of any year. Within two weeks of the receipt of such notice from one party to the other an initial meeting shall be mutually agreed upon. Meetings shall be regularly scheduled by mutual agreement until an agreement is reached by the parties.

Section 2. In the event no amicable agreement is reached by September 1 of the year in question the parties shall consider whether the matters in dispute shall be submitted to final and binding arbitration in accordance with Section 111.77, Wisconsin Statutes."

That article, by its language, is limited to negotiations of successor agreements. There is no language specifically excluding negotiations between the two parties on matters affecting "wages, hours and conditions of employment" which may come up during the life of the contract. In fact, it is well settled that Section 111.70(3)(a)4, effective November 11, 1971, established a duty upon Municipal Employers to bargain in good faith with the representative or a majority of its employees in an appropriate collective bargaining unit, with respect to wages, hours and conditions of employment. 8/

The National Labor Relations Board, in administering the Labor Management Relations Act, has held that waiver of the right to bargain on a mandatory subject of bargaining must be "clear and unmistakable." 9/ The Commission has determined that such waivers must be based on specific language in the agreement or history of bargaining 10/ neither of which is the case here. Therefore, the Examiner must conclude that the above argument of the Respondent is unpersuasive.

The Examiner concludes, based upon the Findings of Fact, Conclusions of Law and Memorandum thereon, supra, that the Complainant has proved by a sufficient quantum of evidence, as required by Section 111.70(4)(a) and 111.07 of the Wisconsin Statutes, that the Respondent has committed prohibited practices within the meaning of Section 111.70(3)(a)4 and of Municipal Employment Relations Act. Therefore, the Examiner has, in the attached Order, given appropriate relief.

Dated at Madison, Wisconsin, this 15th day of August, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Dennis P. McGilligan
Dennis P. McGilligan, Examiner

8/ Green Bay Jt. School District No. 1 (10722-B) 8/72; Milwaukee County (11306) 9/72; City of Milwaukee (11854) 5/73.

9/ See NLRB v. Item Co., CA5, 1955, 35 LRRM 2709; cert. den. U.S. Sup. Ct., 1955, 36 LRRM 2716; Tide Water Assoc'd. Oil Co., NLRB 1949, 24 LRRM 1518.

10/ City of Brookfield (11406-A, B) 9/73. aff. Waukesha Co. Cir. Ct. 6/74.