STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WEST ALLIS PROFESSIONAL POLICEMEN'S PROTECTIVE ASSOCIATION, Complainant, vs. CITY OF WEST ALLIS, Respondent.	Case XX No. 17300 MP-294 Decision No. 12706

Appearances:
Zubrensky, Padden, Graf & Brott, Attorneys at Law, by Mr. George F. Graf, for the Complainant.
Mr. Russ R. Mueller, Attorney at Law, 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 hearing having been held at Milwaukee, Wisconsin, on November 30, 1973, before Commissioner Howard S. Bellman; 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 Order.

FINDINGS OF FACT

1. That the City of West Allis, referred to herein as the Respondent, is a municipal employer having offices at 7525 West Greenfield Avenue, West Allis, Wisconsin, which operates inter alia, a fire department and a police department.

2. That West Allis Professional Policemen's Protective Association, referred to herein as the Complainant, is a labor organization having as its address 1120 South 116th Street, West Allis, Wisconsin; and that at all times material herein, the Complainant has been the collective bargaining representative of certain employes of Respondent's police department.

3. That the West Allis Professional Fire Fighters' Association, Local No. 1004, referred to herein as the Fire Fighters, is a labor organization, which has been at all times material herein the collective bargaining representative of certain employes of the Respondent's fire department.

4. That on July 17, 1973, the Respondent and the Fire Fighters executed a collective bargaining agreement for the period January 1, 1973 to and including December 31, 1975, which provides as follows:

"The following represents the negotiated compensation increases:

1. SALARY INCREASES: A 4.4% increase to be effective January 1, 1973. This increase will be applied to each increment of the salary ranges of each bargaining unit rank. Salary increases for the calendar years 1974 and 1975 to be identical to those granted to the Police Department personnel and shall be implemented under the same terms as apply to the Police Department. Any salary increase granted to the Police Department in excess of 4.4% for the calendar year 1973 shall be implemented for the Fire Department bargaining unit personnel according to the same terms as it is for the Police Department. If the salary increases for these years to the Police Department are granted in different amounts to the ranks, then the comparability of ranks between the Police Department and the Fire Department which is used for implementation of 'equalization of pay with Police Department salary schedule,' as set forth below, shall apply.

2. VACATIONS: Effective January 1, 1974, the four (4) week vacation entitlement shall be lowered from eighteen (18) years to seventeen (17) years.

3. OTHER BENEFITS:

   (a) Effective as soon as is practicably possible after the acceptance of this agreement, the health insurance plan coverage shall be increased as follows: (1) hospital benefit to 365 days, (2) surgical benefits to 'full and usual.'

   (b) Improvements made by the City to the health and life insurance benefits for the years 1974 and 1975 shall also apply to the Fire Department bargaining unit personnel.

   (c) Any and all other benefits shall be increased for the calendar years 1973, 1974 and 1975 in the same proportion and implemented in the same manner as are benefit increases granted to the Police Department bargaining unit personnel.

4. EQUALIZATION OF PAY WITH POLICE DEPARTMENT SALARY SCHEDULE: The equalization of pay is to be attained by December 31, 1975, or at such time thereafter when the salary increases for 1975 are fixed and implemented for the Police Department with other interval increases to be paid as follows: July 1, 1973 - 1%, July 1, 1974 - 1%, July 1, 1975 - 1%. The ranks between the Fire Department and the Police Department for purposes of implementing the equalization of pay will be based on the comparability of the ranks which existed between the departments in 1966, which are as follows: firefighter/patrolman, fire Lieutenant/police Sergeant, and fire Captain/police Lieutenant. The ranks of equipment operator, alarm dispatcher and inspector within the Fire Department bargaining

unit shall receive the same interval increases as well as the same December 31, 1975 final increase, if any, as are received by the fully paid firefighter; i.e., that which is applied to the Step 5 increment of the firefighter salary range.

This agreement precludes resort to the arbitral provisions of ss 111.70 et. seq. Wisconsin Statutes."

5. That on June 28, 1973 the Complainant petitioned the Commission for arbitration pursuant to Section 111.77 of the Municipal Employment Relations Act (MERA) to resolve its then current dispute with the Respondent over the terms of a 1973 collective bargaining agreement; that pursuant to said petition an investigation was commenced by a member of the Commission's staff; and that on September 4, 1973, and prior to arbitration, the Respondent and the Complainant executed a collective bargaining agreement for the calendar year 1973 which provided, inter alia, for certain hospitalization insurance increases, vacation benefits, and salary increases.

6. That on September 10, 1973, the Complainant submitted written proposals for a 1974 collective bargaining agreement; that pursuant to said proposals on October 19, 1973 a negotiations meeting was held by representatives of said parties; that said meeting did not result in an agreement; that on November 12, 1973, the Complainant petitioned the Commission for arbitration pursuant to Section 111.77 of the MERA; and that at the date of the instant hearing an investigation based upon said petition was scheduled.

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

CONCLUSIONS OF LAW

1. That Complainant by entering the aforesaid 1973 collective bargaining agreement or by petitioning for arbitration pursuant to Section 111.77, MERA, respecting a 1974 collective bargaining agreement, has not waived its right to bring the instant action, or otherwise caused the issues raised herein to be nonjusticiable.

2. That Respondent, by entering the aforesaid 1973 collective bargaining agreement with the Fire Fighters, did not, and is not, engaging in any prohibited practice within the meaning of Sections 111.70(3)(a)(1) and (4) of the Municipal Employment Relations Act.

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

ORDER

IT IS ORDERED that the complaint filed in the instant matter be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 17th day of May, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

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

Howard S. Bellman
Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The instant complaint was filed on October 24, 1973. Hearing was conducted on November 30, 1973 and the transcript thereof issued on March 30, 1974. Briefs were exchanged on April 26, 1974.

The Complainant contends that the City violated its duty to engage in "collective bargaining", as defined by MERA, by entering the above-quoted parity agreement with the Fire Fighters. The City, it is argued, must by operation of this agreement approach negotiations with the Complainant with knowledge that certain settlement terms will require an upward revision of the City's agreement with the Fire Fighters. The Complainant's brief includes the following statements:

> "We believe that common sense alone demonstrates that the Police bargaining could in no way be full and untrammeled in view of the parity agreement. Each time the Police made a demand the City would naturally be considering the impact of such demand in light of the added cost of passing the benefit on to the Firemen also."
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> ". . . the issue is whether the City can, in advance of bargaining with the Police and without their consent, saddle them with the added burden of bargaining for the Fire Fighters by executing an Agreement with the Firemen that they will get anything that the Police may negotiate. Refined further, the issue is whether or not the Agreement between the City of West Allis and the Firemen . . . is prohibited by the Wisconsin Statutes because it restrains and interferes with the rights of the Policemen to bargain collectively with the City."
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> ". . . the real issue presented is whether a Firemen's parity agreement of necessity, by its very presence, restrains and interferes with the Policemen's statutory right of collective bargaining."

The City's first arguments are that the Complainant is estopped from making its claim by its agreement to a 1973 collective bargaining agreement "which operates as a waiver, so to speak, of any claimed illegal effect that the parity clause may have had on the negotiations for the calendar year 1973"; and by the proposition that the Complainant "cannot have the benefit of the Agreement itself and also make such a claim"; and that by initiating arbitration of the parties' dispute regarding a 1974 agreement the Complainant has rendered "any alleged defect of the so-called parity clause. . .merely speculative and therefore. . .not. . .a justiciable controversy".

Secondly and thirdly, the City contends that the facts in evidence respecting the history of negotiations between the City and the two labor organizations indicate that the apprehension expressed in this matter by the Complainant is unfounded; and that the law does not declare agreements such as the instant parity pact to be violative of the duty to bargain.

The Commission rejects the City's threshhold positions. We conclude that the ajudication of this matter is not precluded by the 1973 collective bargaining agreement, or the initiation of arbitration proceedings pursuant to Section 111.77, MERA. The issue is not moot because "the question is of first impression and of such public interest and importance and is asserted under conditions which will immediately recur if a dismissal is granted that the issues should be decided. . ." (Joint School District No. 8, City of Madison, et al v. WERB, 37 Wis. 2d 483 [1967]) Also, the record does not disclose a "waiver" in specific terms, by the Complainant of its right to bring this action.

The contention based upon the 1974 arbitration proceeding is denied on the ground that to accept it would distinguish this case on the basis that police and fire labor organizations are involved. Section 111.77, MERA, only covers bargaining with labor organizations representing fire and law enforcement personnel. Furthermore, the Commission holds that even where such arbitration is applicable "collective bargaining" as defined by MERA should occur.

The Commission has studied the authorities cited by the Complainant, and in view of its own knowledge of the collective bargaining process in the municipal sector in the State of Wisconsin, respectfully disagrees with said authorities to the extent that they find agreements, such as the one in question herein, violative of the duty to bargain.

Such agreements are not rare or limited to police and fire settlements 1/ and do, as the Complainant urges, affect the calculations of a municipal employer in its subsequent negotiations with other labor organizations. However, even in the absence of such agreements, employers, whether in the public or private sectors, calculate the affects of proposed settlements upon their relations with other groups of employes, both unorganized and represented by other unions. This is a "fact of life" in collective bargaining. The Complainant realizes this, but distinguishes the present case on the basis of the existence of a formal agreement. This distinction, in turn, focuses on the legally binding nature of the instant parity agreement, as contrasted to the practical considerations of the more common tacit practices to which we refer.

We hold that this distinction is artificial and not to be adopted herein. The parity agreement does not place an absolute "ceiling" on settlements with the Complainant. It adds to the costs of higher settlements. The normal, unformalized, considerations of employers, on the other hand, are very compelling, not only because of cost considerations, but because of very significant tactical considerations that an employer dealing with a number of unions must make respecting the relative positions of such unions. We would indeed be unrealistic and excessively legalistic if we attempted to minimize or eliminate these considerations. We would be engaging in unwarranted conclusions if we held agreements reflecting such considerations to be contrary to the duty to bargain in good faith. An opposite conclusion would eliminate one of the factors to be considered by an arbitrator in resolving impasses in collective bargaining involving the uniformed services. 2/

1/ See Inland Trucking Co., 176 NLRB No. 52, 71 LRRM 1661 (1969).

2/ Sec. 111.77(6)(d) reads as follows:

> "(d) Comparison of the wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:
>
> 1. In public employment in comparable communities.
>
> 2. In private employment in comparable communities."

Parity understandings do not, in our opinion, as is suggested by the Connecticut State Board of Labor Relations in City of New London (Dec. No. 1128), allow the union which enters same to achieve more than "the forces of nature" would provide. Indeed, such understandings are gained by such forces in collective bargaining. Likewise, it is unwarranted to assume that absent such agreements subsequent unions would naturally achieve higher settlements.

Our decision herein does not hold that parity, or the lack thereof, whether between police and fire employes or others, are either traditional or justifiable. It is our determination that where collective bargaining causes the parties to act as the City and Fire Fighters acted herein, there is no prohibited practice in their so doing.

Dated at Madison, Wisconsin, this 17th day of May, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Zel S. Rice II, Commissioner

Howard S. Bellman
Howard S. Bellman, Commissioner