

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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MILWAUKEE POLICE SUPERVISORS' ORGANIZATION,	:	
	:	
Complainant,	:	
	:	Case CXXXIX
vs.	:	No. 17887 MP-355
	:	Decision No. 12742-A
CITY OF MILWAUKEE,	:	
	:	
Respondent.	:	
	:	

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Appearances:

Cook & Franke, Attorneys at Law, by Mr. Francis R. Croak, appearing on behalf of the Complainant.  
 Mr. James B. Brennan, City Attorney, by Mr. Nicholas M. Sigel, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Milwaukee Police Supervisors' Organization having filed a complaint with the Wisconsin Employment Relations Commission, on April 26, 1974, wherein it alleged that the City of Milwaukee had committed certain prohibited practices within the meaning of Section 111.70(3)(a)4 and 5 of the Municipal Employment Relations Act, herein MERA; and the above-entitled matter having come on for hearing before the Commission on June 4, 1974, at Milwaukee, Wisconsin, before Commissioners Zel S. Rice II and Howard S. Bellman; 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, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the Complainant, Milwaukee Police Supervisors' Organization, is an organization representing supervisory law enforcement personnel, and has its principal office located at Milwaukee, Wisconsin.
2. That the Respondent, City of Milwaukee, is a Municipal Employer, and has its principal offices located at City Hall, 200 East Wells Street, Milwaukee, Wisconsin, 53202.
3. That pursuant to a Direction of Election previously issued by it, the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, in accordance with Section 111.70(3)(d) of the Municipal Employment Relations Act, hereinafter referred to as MERA, conducted an election among law enforcement supervisors in the employ of the Police Department of the Respondent; and that on October 5, 1973, the Commission certified the Complainant as the collective bargaining representative for such supervisory law enforcement personnel.
4. That on October 12, 1973, the Complainant forwarded a letter to the Common Council of the Respondent, wherein it enclosed a copy of the Certification issued by the Commission, and wherein it further stated, in material part, as follows:

"The Organization most respectfully reminds your honorable body of the rights assured to the municipal employees it represents, under Wisconsin Statute sections 111.70(2) and 111.70(3)(d), and we request that you take the earliest possible action to discharge the obligation placed upon the City of Milwaukee by that Law, to enter into the 'Fair-share agreement' as defined in section 111.70(1)(h).

Accordingly, we ask you to direct the honorable Chairman of the Common Council Committee on Finance and Personnel to meet at the earliest possible hour with the Directors of the Milwaukee Police Supervisors' Organization, or to designate representatives with appropriate authority, for the purpose of entering into such 'Fair-share agreement'."

5. That on January 7, 1974, the Municipal Employer's Personnel Director, at the previous request of the Committee on Finance and Personnel of the Common Council of the Respondent, reviewed the Complainant's request that the Respondent meet with the Complainant to enter into a fair-share agreement, and in that regard forwarded a letter to the Common Council and stated, in material part, as follows:

". . . it has not been established that the City is required to negotiate wages, hours, and conditions of employment with this organization. Therefore, it would not be desirable for the City at this time to enter into labor negotiations with this organization on any matters including 'Fair-share agreement.'

It is recommended, therefore, that the request for a 'Fair-share agreement' be denied at this time, and that this communication be placed on file.";

and that the Common Council of the Respondent, on January 15, 1974, placed on file and in effect tabled the communication from the Complainant dated October 12, 1973.

6. That subsequent to the Certification noted above, the Complainant made numerous requests and demands upon the Respondent to enter into negotiations regarding wages, hours and conditions of employment affecting law enforcement supervisory personnel in the employ of the Respondent; that the Respondent, through its agents, while conferring with Complainant on certain matters relating to wages, hours and working conditions, has refused to collectively bargain with the Complainant; and further, that the Respondent has rejected the request of the Complainant to honor dues check off authorizations executed by certain law enforcement supervisory personnel.

7. That, while refusing to engage in collective bargaining with the Complainant with respect to wages, hours and working conditions of law enforcement supervisory personnel, the Respondent has unilaterally implemented changes in wages, hours and working conditions of such law enforcement supervisory personnel.

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

#### CONCLUSIONS OF LAW

1. That the supervisory law enforcement personnel employed by the Respondent, City of Milwaukee, are not municipal employees within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

2. That, although Section 111.70(3)(d) of the Municipal Employment Relations Act does not preclude law enforcement supervisors from organizing separate units of supervisors for purposes of negotiating with their municipal employers, no provision in the Municipal Employment Relations Act grants law enforcement supervisory personnel the protected rights of self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, or the protected right to refrain from any and all such activities.

3. That, since there is no provision in the Municipal Employment Relations Act which sets forth a duty upon any municipal employer to collectively bargain with the representative of law enforcement supervisory personnel, under the circumstances set forth in the Findings of Fact, the Respondent, City of Milwaukee, did not have, and does not presently have, a duty to bargain collectively with the Complainant, Milwaukee Police Supervisors' Organization, with respect to the wages, hours and other conditions of employment affecting law enforcement supervisory personnel in the employ of the Respondent, City of Milwaukee.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes 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 17<sup>th</sup>  
day of April, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Howard S. Bellman  
Howard S. Bellman, Commissioner

Herman Torosian  
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

The Complainant alleges that Respondent refuses (1) to recognize Complainant organization as the exclusive bargaining agent of certain supervisory personnel of Respondent; (2) to bargain collectively with Complainant on questions of wages, hours and conditions of employment generally and including a fair-share agreement specifically; and (3) to deduct Complainant's organization dues from its members' earnings.

As to the first allegation, Complainant states that on October 5, 1973, the Commission certified it as the exclusive representative of certain supervisory personnel of Respondent, and that as such, Complainant organization is entitled to recognition by the Municipal Employer under MERA. Complainant states that Respondent's refusal to recognize it has been demonstrated by Respondent's frequent failure to even provide Complainant organization with copies of all documents and records of Respondent's recommendations and actions regarding wages, hours and conditions of employment of the members of the certified unit. As to its second allegation, Complainant contends that a corollary of the right to recognition is the duty of management to bargain with the certified bargaining agent. Complainant argues that collective bargaining, as defined by Section 111.70(1)(d) is a mutual obligation between the representative of municipal employes and their employer, but that Respondent has refused to bargain collectively with Complainant in violation of Section 111.70(3)(a)4. As to its third allegation, Complainant contends that a further corollary of the right to recognition is the right of Complainant's members to have their organizational dues deducted from their pay checks when, as here, the exclusive bargaining representative has tendered to Respondent written authorization for such deduction. Since Respondent deducts such dues for other labor organizations representing certain other of Respondent's refusal to deduct such dues for Complainant's members constitutes a prohibited practice within the meaning of Section 111.70(3)(a)1 and 3 of MERA, according to Complainant.

The Respondent admits that it has refused to bargain collectively and to administer dues check-off or fair share for Complainant's members, but it contends that such refusal is not a violation of MERA. Respondent argues that Complainant organization of supervisors is not an organization of "municipal employes" under MERA, and therefore, although it recognizes Complainant as the certified representative of certain of its supervisory personnel, Respondent contends that it has no obligation to bargain with Complainant on questions regarding wages, hours and conditions of employment generally, or with regard to a fair-share agreement specifically. Further, Respondent maintains that it has no obligation under MERA to administer dues check-off or fair share for Complainant's members.

RECOGNITION ISSUE

In December, 1971 Complainant petitioned the Commission to conduct an election, pursuant to Section 111.70(3)(d) of MERA, among supervisory personnel, with the power to arrest, employed by the Respondent to determine whether said supervisory personnel desired to be represented by Complainant for the purpose of negotiating with Respondent. After a number of intervening delays, the Commission ordered an election on July 5, 1973, the election was held on September 25, 1973, and the results certified on October 5, 1973.

Respondent acknowledges that Complainant is the representative of certain of its supervisory personnel for purposes of negotiating. Further,

Respondent has recognized Complainant organization as such representative insofar as Respondent has considered Complainant's recommendations regarding wages, hours and conditions of employment and Respondent has sent copies of many, but not all, of its responses to such recommendations and Respondent's own proposals and decisions to Complainant.

#### COLLECTIVE BARGAINING ISSUE

Since Respondent admits that it refused to bargain collectively with Complainant generally within the meaning of Section 111.70(1)(d) of MERA, or specifically with regard to a fair-share agreement within the meaning of Section 111.70(1)(h) of MERA, the narrow issue is whether the Respondent has a duty to bargain collectively with Complainant whom it has recognized as the exclusive representative of certain of its supervisory personnel.

The rights set forth in Section 111.70(2) of MERA, grant:

". . . the right of self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, and such employes shall have the right to refrain from any and all such activities . . ."

are rights which are granted to municipal employes. The term "municipal employe" is defined in Section 111.70(1)(b) as meaning:

". . . any individual employed by a municipal employer other than an independent contractor, supervisor, or confidential, managerial or executive employe."

There is no issue that the personnel employed by the Respondent, which are involved in this proceeding, are law enforcement supervisory personnel. Section 111.70(3)(d) states, in material part, as follows:

"Nothing in this subchapter shall preclude law enforcement or firefighting supervisors from organizing separate units of supervisors for purposes of negotiating with their municipal employers."

This section of MERA permits municipal employers, if they so desire, to negotiate with organizations representing supervisory law enforcement or firefighting personnel. There is no provision in MERA which requires that a municipal employer do so. Nor is there any provision in MERA which grants supervisory personnel the same rights afforded to "municipal employes" in the Act. Further, the prohibited practices set forth in MERA only apply to activities involving municipal employers and employes or their organizations, or to any person acting on behalf or in the interest of municipal employes or municipal employers, and not to law enforcement or fire fighter supervisory personnel or their organizations.

Since the Municipal Employer has no statutory duty to bargain collectively with the supervisory organization herein, its failure to enter into a fair-share agreement or to honor the dues check-off authorizations cannot be deemed to be prohibited practices. 1/

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1/ Even where municipal employes execute dues check-off authorizations, there is no obligation upon a municipal employer to honor such dues check-off authorizations unless it has agreed to do so in collective bargaining.

Therefore, the activity of the Municipal Employer, as alleged in the complaint, and as established in the record, did not constitute prohibited practices within the meaning of the Municipal Employment Relations Act, and, therefore, we must dismiss the complaint.

Dated at Madison, Wisconsin this 17<sup>th</sup> day of April, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Howard S. Bellman  
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