

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XVII  
No. 17690 ME-1032  
Decision No. 13074


No. 13074

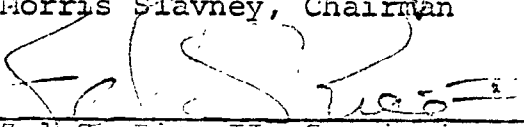
3. That, if no request is made for an election within 14 days from the date hereof, the petition initiating the instant proceeding shall be dismissed.

Given under our hands and seal at the  
City of Madison, Wisconsin this 7<sup>th</sup>  
day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING ORDER DETERMINING  
SCOPE OF BARGAINING UNIT AND GRANTING LEAVE  
TO AMEND PETITION FOR ELECTION

General Drivers & Helpers Union Local No. 662, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, filed a petition with the Commission on February 26, 1974 requesting an election in a claimed appropriate unit of all Dispatchers employed by the St. Croix County Sheriff's Department. Hearing on that petition was initially set for March 28, 1974.

Copies of the notice of hearing were served on the District Attorney for St. Croix County, whose office had previously represented the County in matters before the Commission, and on the County Clerk. The Commission's records indicated that the Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, is the representative in a bargaining unit of Courthouse employees of St. Croix County and that certain Criminal Investigators employed by the St. Croix County Sheriff's Department were represented by Attorney Webster A. Hart of Eau Claire. Accordingly, notice of the hearing in the instant matter was also served on the District Representative of the WCCME and on Attorney Hart.

Through conversations between the parties and between the parties and the Hearing Officer, the facts concerning the arrest powers of the Dispatchers became known. Thereafter, the District Representative of the WCCME advised the Hearing Officer that it was the position of that organization that deputized law enforcement personnel were properly excluded from the Courthouse unit, composed primarily of clerical employees, and that the WCCME did not claim to represent law enforcement employees of St. Croix County.

Shortly prior to the hearing date initially set in the matter, Attorney C. A. Richards of Hudson, Wisconsin, informed the Hearing Officer that he had been retained as special counsel for the County, and he requested a postponement of the hearing. Notices were issued March 27, 1974 postponing the hearing in the matter to April 4, 1974. Shortly prior to the April 4, 1974 hearing date, Attorney James L. Everson of Mulcahy & Wherry, S.C., Wausau, Wisconsin, informed the Hearing Officer that he had been retained as special counsel for the County, and he requested a further postponement of the hearing to a date following April 16, 1974, when the County Board of St. Croix County was scheduled to hold its reorganizational meeting. Notices were issued on April 3, 1974, postponing hearing in this matter to April 22, 1974.

Hearing was held at Hudson, Wisconsin, on April 22, 1974, at which time the Municipal Employer took the position that the petitioned-for unit was an inappropriate fragmentation of a larger appropriate unit. Thereupon, Attorney Hart intervened as the representative of certain employees in the unit claimed appropriate by the County. The parties were asked to file written statements of their positions following the close of the hearing, and such statements were filed, the last of which was received on May 28, 1974.

On May 20, 1974, the Petitioner herein filed a complaint with the Commission, 1/ wherein it alleged that the Municipal Employer had committed prohibited practices within the meaning of Section 111.70(3)(a)

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1/ Docketed as St. Croix County, Case XVIII.

of the Municipal Employment Relations Act (MERA) and wherein it requested that the Commission remedy such alleged prohibited practices by an order requiring the County to bargain with the Petitioner as the exclusive collective bargaining representative of the employees in the Dispatcher unit claimed appropriate in the petition filed herein. Upon the filing of the complaint in Case XVIII, the Commission regarded the instant case as "blocked" and took no further action herein. However, during the hearing held in Case XVIII on July 10, 1974, the parties to that proceeding stipulated that, in view of the interest and participation of the Intervenor in this proceeding, the Commission should proceed with its determination on the question raised in this proceeding concerning the unit appropriate for collective bargaining, and that the parties to the prohibited practice proceeding would not relitigate the unit question in that case.

#### UNIT APPROPRIATE FOR COLLECTIVE BARGAINING:

During the course of the hearing, an issue arose concerning the unit appropriate for collective bargaining. The Petitioner maintained that a unit limited to Radio Dispatchers should be appropriate, while the County maintained that all sworn law enforcement employees of the County should be included in a single unit, so that a separate unit of Dispatchers would be inappropriate. Attorney Hart asserted that such a county-wide unit of law enforcement personnel would infringe upon the recognition by the County of the Criminal Investigation unit which he has representing, and a claimed collective bargaining agreement covering that unit.

The County has historically maintained three groups of law enforcement employees, all of whom are sworn deputies and have power of arrest. Six positions are allocated for Radio Dispatchers and Jailors. These employees perform their function in the Sheriff's Office at Hudson and are under the supervision of the Sheriff and his Administrative Assistant. Their wages, hours and conditions of employment have been set heretofore by the Law Enforcement Committee and the Finance & Personnel Committee of the County Board and by the County Board itself. Five Deputy Sheriffs and a Juvenile Officer cover the criminal investigation function. These employees are also headquartered at the Sheriff's office in Hudson, but they work in the field throughout the County. Like the Dispatchers, they are under the supervision of the Sheriff and his Administrative Assistant and under the jurisdiction of the Law Enforcement and Finance & Personnel Committees of the County Board. The traffic control function throughout the County is covered by seven county Traffic Officers, working under the Captain of County Traffic Officers. The wages, hours and conditions of employment of the Traffic Officers have heretofore been set by the Highway Committee of the County Board, which has been authorized to act on such matters independently of the County Board. The County Traffic Officers are headquartered in the County Highway Department offices at Hammond, Wisconsin.

The Dispatchers in the unit claimed appropriate by the Petitioner handle radio calls for both the Criminal Investigators and the Traffic Officers, as well as for the City of Hudson Police Department. Except for this overlap, there has historically been no integration of operations and no interchange of employees between operations. The Dispatchers and the Traffic Officers have never previously engaged in collective bargaining, while the Criminal Investigation employees have retained Attorney Hart to represent them in negotiations concerning their wage packages for 1973 and 1974.

The Petitioner lacked information sufficient to enable it to enter into a stipulation concerning the bargaining history in the Criminal Investigation group, but it did not oppose or contest elements of the stipulation offered by the County and Attorney Hart on the point. The County never adopted a formal resolution recognizing a collective bargaining

representative for the Criminal Investigation employees, but an employee voice in setting wages was heard in November, 1972, when the Criminal Investigators began being represented by another attorney who is now deceased. Mr. Hart first became counsel to the Criminal Investigators in April, 1973. A number of meetings were held for negotiations on wages. The County was initially represented by the Law Enforcement and Finance & Personnel Committees of the County Board. District Attorney Owen Williams first became involved in the matter in October of 1973, and he first attended a negotiations meeting between the parties on October 16, 1973. During the course of that meeting, the County made offers concerning both 1973 and 1974, but neither offer was accepted by the representatives of the employees. It was the consensus of the parties at the conclusion of that meeting that the negotiations were at an impasse and a joint request was made to the Commission for the assignment of a mediator. A mediation meeting was held on November 15, 1973, but the impasse remained unresolved. The negotiating committees of the parties met again bilaterally on November 29, 1973, and Williams and Hart met on December 4, 1973, to discuss the issues but the dispute remained unresolved. On December 28, 1973, Williams sent Hart the "final offer" of the County, together with petition forms for final and binding arbitration pursuant to Section 111.77, Wisconsin Statutes.

Thereafter, a question arose as to whether the parties would submit both 1973 and 1974 in a single arbitration proceeding or have two separate arbitration proceedings for 1973 and 1974. That question was not immediately resolved and no petition for arbitration was ever filed with the Commission.

Attorney Richards was retained by the County in February of 1974 to represent the County in these negotiations. A meeting was held concerning the matter on March 1, 1974, at which time, Williams, Richards and Hart agreed upon a further delay to permit the County Board another opportunity to take a position on the question of whether one or two arbitration proceedings would be called for. On March 7, 1974, Richards sent a letter to Hart wherein he stated the County's offers for 1973 and 1974. On March 15, 1974, Hart responded, by letter, as follows:

"I have your letter of March 7th and you did not answer the question that we originally proposed.. Are you willing to arbitrate the '73 and '74 contracts under the same petition or are you going to require us to file two separate petitions for two separate arbitrations?

I have communicated your offer to my men, however, in view of the fact that it is a reduction from the county's previous position, I don't believe they are going to accept it. Therefore it is essential that we reach some accord as to how this arbitration can proceed. Please advise by return mail."

Telephone conversations occurred thereafter, resulting in an increase in the County's economic offer for 1973 by one half of one percent. The County's offers for 1973 and 1974 were not accepted on behalf of the employees at that time, but were never withdrawn by the County. The County's offer for 1974 remained the same as had been offered during the mediation meeting held in November of 1973.

Telephone conversations occurred on or before April 3, 1974, at which times the Hearing Officer advised Messrs. Stein, Hart, Richards and Everson of the decisions of the Commission in previous cases involving law enforcement personnel, and advised the representatives of the parties that they should be prepared to present evidence and argument at the hearing in the instant matter on the question of whether the unit claimed appropriate in the petition filed herein is appropriate within the meaning of Section 111.70(4)(d)(2)(a) of MERA.

On April 4, 1974, Attorney Hart notified the County of acceptance of the County's offers for both 1973 and 1974 on behalf of the employees he represents. The agreement for 1973 was incorporated into a resolution of the County Board and was adopted by the County Board during its April, 1974 meeting. The translation of the 1974 package to money amounts for recitation in a similar resolution for 1974 became complicated, and that resolution could not be readied for introduction at the April meeting of the County Board. A resolution of the County Board containing the terms of the 1974 settlement was adopted by the County Board on May 14, 1974, along with a resolution withdrawing any recognition previously extended to representatives of the criminal investigation employees.

In support of its position concerning the scope of the bargaining unit, the County cites Sawyer County (12457) 1/74, Walworth County (11636) 3/73, and Douglas County (16993) 5/72, where the Commission established county-wide units of law enforcement employees, and Milwaukee County (12571) 3/74, where the Commission applied the anti-fragmentation principle to establish a county-wide unit of attorneys in the face of claims of diverse day-to-day duties performed by employees within the county-wide grouping. The County acknowledges the settlements reached with the representative of the Criminal Investigators for 1973 and 1974, but asserts that it has withdrawn any recognition of that group as a separate bargaining unit and that the agreements are not of sufficient substance (citing Appleton St. School Dist. (9045) 5/69) to constitute a bar to an election in the county-wide unit. The County also asserts that a contract in an inappropriate unit should not bar an election in a larger appropriate unit and it urges adoption of the private sector contract bar rules requiring that, to constitute a bar to an election, a contract must be reduced to writing and executed by both parties.

The Petitioner contends that a separate unit of Dispatchers is appropriate, based on the historical division of the law enforcement function into three distinct operations, and the lack of employee interchange between operations. It also contends that whether other units may also be appropriate should not be determinative inasmuch as the unit that it requests is one possible appropriate unit.

The Criminal Investigators assert their 17-month history of negotiations and the agreements reached with the County concerning their wages for 1973 and 1974 as evidence of the existence of an appropriate separate bargaining unit. They counter the County's position here as being inconsistent with its past conduct, and contend that the County's shift of position is calculated to frustrate certification of any representative. The evidence indicates that if the positions of the Petitioner and Intervenor were to be adopted, very undesirable fragmentation would result, with three bargaining units of approximately equal size being created among a total of 19 employees. The inclusion of all employees under the supervision of the Sheriff in a single unit would have the effect of overruling the objections of both the Petitioner and Intervenor, but would create a distinction not desired by any party here. Since only the Criminal Investigators have previously engaged in collective bargaining, a "residual" unit of law enforcement employees would include the Dispatchers and the Traffic Officers. While that unit would accept the position asserted by the Intervenor, the unit so established would preserve the artificial separation of employees under the supervision of the Sheriff into two units while co-mingling employees heretofore under separate supervision on the same basis as would be encountered in a county-wide unit of law enforcement personnel.

The Commission deems the "agreement" reached between the County and the representative of the Criminal Investigators not to constitute a bar to a determination that the appropriate unit consists of all law enforcement employees of the County, or to the eventual conduct of an election in that unit. The County's offer for 1974 remained unchanged and unaccepted from the time of the mediation meeting held in November

of 1973 until after the attorney representing those employees had been served with notice of the instant proceeding and advised of the question being determined herein.

Leave to Amend

The stipulation of the parties in Case XVIII to permit the Commission to proceed with its determination on the unit question herein does not constitute a complete waiver by the Petitioner of the effects of the conduct alleged in Case XVIII on any election which might be directed herein. The Commission continues to deem the complaint as blocking such an election. The unit found to be appropriate is significantly different from either of the units claimed appropriate by the Petitioner and Intervenor, and the Commission has therefore set a period of 14 days from the date hereof within which either the Petitioner or the Intervenor, or both of them, may indicate to the Commission a continued desire to participate in an election in the county-wide unit. In the event that neither representative requests an election, the petition will be regarded as withdrawn and will be dismissed. If either or both of the representatives request an election, the matter will be held in abeyance pending the final resolution on the complaint of prohibited practices in Case XVIII.

Eligibility Issues

All rulings on eligibility issues are held in abeyance pending the filing of any amendments to the positions of the claiming representatives and the disposition of the blocking complaint.

Dated at Madison, Wisconsin this 7th day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney /s/  
Morris Slavney, Chairman

Zel S. Rice II /s/  
Zel S. Rice II, Commissioner

Howard S. Bellman /s/  
Howard S. Bellman, Commissioner