

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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THOMAS M. SCHMIDT,

Complainant,

vs.

CITY OF MILWAUKEE, and HAROLD A. BAEIER,  
Chief of Police, City of Milwaukee,

Respondents.  
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Case CLIV  
No. 19032 MP-453  
Decision No. 13558-C

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,  
AND CONCLUSION OF LAW AND REVISING EXAMINER'S ORDER

Examiner Marvin L. Schurke having, on January 5, 1976, issued Findings of Fact, Conclusion of Law and Order, as well as Memorandum Accompanying same, in the above entitled matter, wherein the Examiner concluded that the above named Respondents, in denying the above named Complainant the right to be represented by the Professional Policemen's Protective Association of Milwaukee (PPPA) in a disciplinary proceeding involving the above named Complainant before a Board of Inquiry established within the Milwaukee Police Department, had interfered with, restrained and coerced the above named Complainant in the exercise of his rights set forth in Section 111.70(2) of the Municipal Employment Relations Act (MERA), and thereby committed a prohibited practice within the meaning of Section 111.70(3)(a)1 of MERA; and further wherein the Examiner ordered the Respondents to cease and desist from refusing the Complainant the right to be so represented and from giving effect to the decision of said Board of Inquiry leading to a discipline of the Complainant, and in said Order the Examiner also ordered the Respondents to expunge any reference to such action from the employment records of the Complainant, to withdraw said decision of the Board of Inquiry, to make the Complainant whole for any loss of benefits suffered by him as a result of his suspension, and to permit the Complainant, and any employee similarly situated, the right to be represented by said Association in a hearing before said Board of Inquiry with respect to the charges involved, or in any other disciplinary hearing before said Board of Inquiry; and thereafter the Respondents having timely filed a petition requesting the Commission to review the decision of the Examiner; and thereafter the Complainant having filed a response to such petition for review; and the Commission having reviewed the entire record, the petition for review and the response thereto, being fully advised in the premises, and being satisfied that the Findings of Fact, Conclusion of Law and Order, with Accompanying Memorandum, issued by the Examiner should be affirmed;

NOW, THEREFORE, it is

ORDERED

That, pursuant to Section 111.07(5) of the Wisconsin Statutes, the Wisconsin Employment Relations Commission hereby adopts the Examiner's Findings of Fact, Conclusion of Law and Order, with Accompanying Memorandum, issued in the above entitled matter as its Findings of Fact, Conclusion of Law and Order, with Accompanying

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Memorandum, and, therefore, the respondents, City of Milwaukee, and Harold M. Greier, Chief of Police, City of Milwaukee, shall notify the Wisconsin Employment Relations Commission within ten (10) days of the receipt of a copy of this order as to what steps they have taken to comply therewith.

Given under our hands and seal at the  
City of Madison, Wisconsin this 6th  
day of May, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman  
Herman Torosian  
Herman Torosian, Commissioner  
Howard S. Bellman  
Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING ORDER AFFIRMING EXAMINER'S FINDINGS  
OF FACT AND CONCLUSION OF LAW AND REVISING EXAMINER'S ORDER

The Examiner's Decision:

A summary of the Examiner's decision is set forth in the preface to the Commission's Order and need not be detailed herein.

The Petition for Review:

In their petition for review the Respondents contend that:

(1) The Examiner committed a procedural error in denying the Respondents' motion <sup>1/</sup> to amend the answer and to reopen the hearing to take evidence with regard to the history of collective bargaining between the City and the Professional Policemen's Protective Association of Milwaukee, hereinafter referred to as the PPPA, and to include the collective bargaining agreement existing between the City and the PPPA into the record, and

(2) The cease and desist order issued by the Examiner, in effect, was too broad, since the complaint alleged a prohibited practice with respect to only one employee, the Complainant, and in that regard, Respondents contend that the Examiner exceeded his jurisdiction and deprived the Respondents of due process of law in issuing an order applicable to employees other than the Complainant.

Further, in their petition for review, the Respondents requested a stay of the Examiner's Order, oral argument before the Commission on the petition for review, a reversal of the Examiner's Order, that the Commission remand the proceeding to the Examiner for the purpose of opening the record and permitting the Respondents to file an amended answer, as well as to provide the Respondents with an opportunity to introduce additional evidence. Finally, the Respondents argue, should the Commission not order the hearing to be reopened, that the Examiner's Order be modified to limit the remedy only to the Complainant. The Complainant filed a response to the petition for review in support of the Examiner's decision, as well as in support of the Examiner's previous order denying a motion to reopen the hearing.

The Examiner's Order Dismissing the Motion to Reopen:

The hearing held before the Examiner was closed on May 12, 1975. The hearing took less than two hours and the transcript of the proceedings was covered in 22 pages. After the examination of one witness, Counsel for the Respondents indicated that he had no further witnesses and that his only further request was that the Examiner take notice of the provision of Chapter 586 of the Laws of 1911, as amended. The Examiner granted said request, and the hearing was closed with arrangements for the filing of briefs on or before June 13, 1975, and the filing of reply briefs on or before June 23, 1975. On June 13, 1975, the Respondents filed a motion with the Examiner, as well as an affidavit in support thereof, wherein the Respondents requested the Examiner to grant the Respondents leave to amend their answer and to reopen the hearing to permit the Respondents to introduce evidence in support of the affirmative defense set forth in the proposed amended answer. The nature of the proposed amendment to the answer set forth that there

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<sup>1/</sup> Filed after the hearing had been closed.

was a collective bargaining agreement in affect between the City and the PPPA, wherein, as alleged by the Respondents, the PPPA waived any right to assist Complainant in the hearing before the Board of Inquiry. The Complainant opposed the motion as being untimely and immaterial.

On August 8, 1975, the Examiner issued a formal Order denying the motion on the basis that the Respondents did not meet the tests for reopening the hearing as set forth in Gehl Company (9474-G), 5/71, in that the evidence was not newly discovered after the hearing. Further, the gist of the Examiner's rationale was that the collective bargaining agreement entered into on March 25, 1974, was in existence at the time the complaint was filed and during the course of the hearing herein.

We agree with the Examiner's rationale in denying the motion to reopen, and therefore sustain such Order issued by the Examiner. Therefore, we see no basis for remanding the proceeding to the Examiner for the purpose of reopening the hearing for receiving the amended answer and/or further introduction of the additional evidence desired to be introduced by the Complainants.

The Examiner's Final Order:

The full order of the Examiner as reflected in his decision reads as follows:

"ORDER"

IT IS ORDERED that the Respondents, City of Milwaukee and Harold A. Breier, their officers and agents, shall immediately:

1. Cease and desist from
  - a. Refusing to permit representatives of the Professional Policemen's Protective Association of Milwaukee to represent municipal employees in the recognized bargaining unit of law enforcement employees in hearings before Boards of Inquiry concerning the discipline of such employees.
  - b. Giving effect to Order No. 7106 of any other decision made on the basis of the Board of Inquiry hearing held on March 25, 1975 in connection with the discipline of Thomas M. Schmidt.
2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:
  - a. Expunge from the employment records of Thomas M. Schmidt any and all reference to actions taken by Harold A. Breier concerning charges heard by the Board of Inquiry on March 25, 1975, to the extent that such actions were taken on or after March 25, 1975.
  - b. Withdraw Order No. 7106 and make Thomas M. Schmidt whole for any loss of pay or benefits he may have suffered by reason of the suspension of Thomas M. Schmidt pursuant to Order No. 7106.
  - c. Permit Thomas M. Schmidt and any employee similarly situated representation by the Professional Policemen's Protective Association of Milwaukee, or by any

other labor organization representing such municipal employee, in any rehearing before the Board of Inquiry of the charges filed on or about March 14, 1975 or in any other disciplinary hearing before the Board of Inquiry.

- d. 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."

It is to be noted that in Paragraph 1.a. the Examiner ordered the respondents to cease and desist from denying all employees in the law enforcement bargaining unit of representation before the Board of Inquiry.

Paragraph 2.c. of the Order requires the Respondents to permit the Complainant and "any employees similarly situated" representation by the PPPA in any rehearing before the Board of Inquiry of the charges filed on or about March 14, 1975, or in any other disciplinary hearing before the Board of Inquiry.

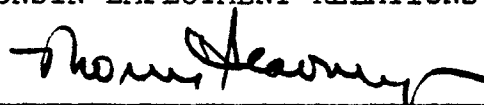
Because of the clarity of the issues raised by the petition for review and the response thereto, the Commission has determined that the Respondent's request for oral argument should be denied.

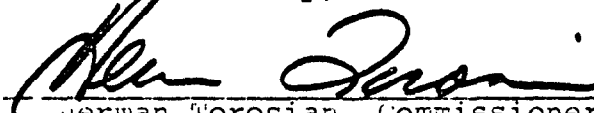
It should be noted that the Order issued by the Examiner was based on the record made before him at the hearing on the pleadings filed prior to the close of the hearing before the Examiner. Should any other law enforcement officer, or the individual Complainant involved herein, become involved in another hearing before the Board of Inquiry, and should said Board of Inquiry not permit said law enforcement officer so involved to be represented by the PPPA, and should the PPPA or the particular officer involved request that the Commission seek enforcement of the Order of the Examiner as affirmed herein, and should the Respondents contend that in an existing collective bargaining agreement the PPPA waived its right to represent the officer involved, prior to seeking enforcement of the instant Order, the Commission will hold a hearing to determine whether there has been such a contractual waiver of the right of representation.


Dated at Madison, Wisconsin this 6th day of May, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Howard S. Bellman, Commissioner