

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE PROFESSIONAL POLICEMEN'S  
PROTECTIVE ASSOCIATION,

Complainant,

vs.

CITY OF MILWAUKEE, A Municipal  
Corporation,

Respondent.

Case CL  
No. 18647 MP-414  
Decision No. 13726

Appearances:

Boyle, Carter and Schaefer, Attorneys at Law, by Mr. James H.  
Schaefer and Mr. Gerald P. Boyle, for the Complainant.  
James B. Brennan, City Attorney, City of Milwaukee, Wisconsin,  
by Mr. Thomas E. Hayes, for the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

A complaint of a prohibited practice under the Municipal Employment Relations Act, (MERA) having been filed with the Wisconsin Employment Relations Commission in the above-entitled matter and a hearing in the matter having been conducted by Robert M. McCormick, Hearing Officer, on January 31, 1975, at Milwaukee, Wisconsin; and the Commission having considered the evidence, arguments, and briefs of Counsel, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That the Milwaukee Professional Policemen's Protective Association, hereinafter referred to as the Complainant, is a labor organization having its offices at 1012 North Third Street, Milwaukee, Wisconsin, 53203; and that, at all times material herein, the Complainant has been the exclusive collective bargaining representative for non-supervisory law enforcement personnel employed by the City of Milwaukee.

2. That the City of Milwaukee, hereinafter referred to as the Respondent, is a Municipal Employer having its offices at 200 East Wells Street, Milwaukee, Wisconsin 53202.

3. That on June 28, 1972, Complainant and Respondent entered into a collective bargaining agreement covering the wages, hours and working conditions of non-supervisory law enforcement personnel in the employ of Respondent for the period of January 1, 1971 to November 2, 1972.

4. That pursuant to the 1971-1972 collective bargaining agreement, Complainant and Respondent entered into negotiations for a new collective bargaining agreement within 90 days of the expiration of the 1971-1972 bargaining agreement.

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5. That Complainant and Respondent failed to reach an agreement during said negotiations; that pursuant to Section 111.70(4)(jm), Complainant filed a petition with the Wisconsin Employment Relations Commission wherein it alleged that the parties reached an impasse in such bargaining and that therefore the Commission should order parties to final and binding arbitration; and that therefore the Commission found an impasse to exist between the parties and ordered arbitration, which commenced on February 16, 1973, before Arbitrator Martin Wagner.

6. That on February 16, 1973, William P. Ward, William Gengler, and Kenneth Kosidowski, members of Complainant and employees of Respondent, appeared before Arbitrator Wagner; that all three individuals subsequently requested that they be excused from duty with pay for their appearances, that all three individuals' requests were denied by the Respondent and that all three individuals subsequently filed grievances regarding said refusal on February 26, 1973, February 22, 1973, and February 25, 1973, respectively.

7. That on April 25, 1973, Complainant notified Respondent of its desire to proceed to arbitration on said grievances; and that on May 16, 1973, Respondent informed Complainant of its belief that the grievances were not subject to arbitration.

8. That on August 13, 1974, Complainant again notified Respondent of its desire to proceed to arbitration regarding the three grievances; and that on October 18, 1974, the Respondent reiterated its May 16, 1973 position that the grievances were not subject to arbitration.

9. That on December 24, 1974, the Complainant filed the instant complaint with the Commission alleging that Respondent's refusal to arbitrate the three grievances violated a collective bargaining agreement existing between the parties; and thus constituted a prohibited practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

#### CONCLUSION OF LAW

That the Wisconsin Employment Relations Commission will not exercise its jurisdiction to determine the merits of the complaint filed herein since said complaint was not timely filed within the meaning of Section 111.07(14) of the Wisconsin Statutes.

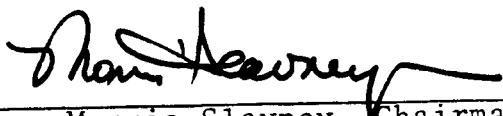
On the basis of the above and foregoing Findings of Fact, Conclusion of Law, the Commission makes the following

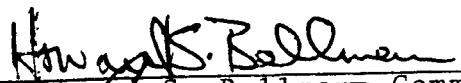
#### ORDER

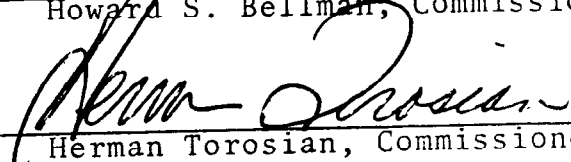
IT IS ORDERED that the complaint filed herein be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 16th day of June, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
Howard S. Bellman, Commissioner

  
Herman Torosian, Commissioner

No. 13726

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER

The Pleadings

In its complaint, filed December 24, 1974, Complainant alleged that Respondent had committed a prohibited practice under Section 111.70 (3)(a)5 of MERA by refusing to arbitrate the grievances of Ward, Gengler and Kosidowski as allegedly required by the parties' collective bargaining agreement. Complainant requested that the Commission find Respondent guilty of this prohibited practice and order Respondent to proceed to final and binding arbitration of said grievances.

Respondent filed an answer on January 29, 1975, which denied Complainant's allegations and asserted several affirmative defenses, including the allegation that the instant complaint had not been filed within the one year statute of limitations prescribed by Section 111.07(1) of the Wisconsin Employment Peace Act (WEPA). Respondent requested that the Commission dismiss the Complaint.

Pursuant to notice, a hearing was held regarding this matter on January 31, 1975. Post-hearing briefs were submitted until April 23, 1975.

Discussion

This Commission's jurisdiction to consider the merits of a prohibited practice complaint is specifically limited by Section 111.07(14) of WEPA and Section 111.70(4)(a) of MERA. The Commission can only consider the merits of complaints filed within one year of specific action which gives rise to the complaint.

The record reveals that on May 16, 1973, Respondent refused to proceed to arbitration of the instant grievances. The date of this initial refusal marks the beginning of the one year period within which a complaint based upon said refusal must be filed if said Complaint is to be deemed timely. The record indicates that the instant complaint was not filed until December 24, 1974. Having received the complaint more than one year after the date of Respondent's refusal to proceed to arbitration, this Commission must refrain from exercising its jurisdiction to consider the merits of the complaint. 1/

Complainant contends that the complaint was filed in a timely fashion because of the renewal of its demand for arbitration on August 13, 1974, and the Respondents subsequent refusal to proceed to arbitration on October 18, 1974. However to allow the statute of limitations to commence at the date of the latest refusal to proceed

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1/ ABC Cartage and Trucking, Inc. (6897-B) 7/65; Retail Store Employees Union, (8409-C) 6/68.

to arbitration would extend to infinity the period of time within which a complaint would be filed. Such a conclusion would be inconsistent with the obvious intent of the statute of limitations.

Dated at Madison, Wisconsin, this 16th day of June, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Howard S. Bellman  
Howard S. Bellman, Commissioner

Herman Torosian  
Herman Torosian, Commissioner