STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of BURLINGTON POLICEMEN'S BENEVOLENT ASSOCIATION Requesting a Declaratory Ruling in a Dispute between said Petitioner and CITY OF BURLINGTON	Case XXV No. 19662 DR(M)-66 Decision No. 14036-A

DECLARATORY RULING

Burlington Policemen's Benevolent Association having on October 8, 1975 filed a petition requesting the Wisconsin Employment Relations Commission to issue a Declaratory Ruling as to whether an arbitrator appointed by the Commission pursuant to Section 111.77 of the Municipal Employment Relations Act (MERA), may consider the final offer of the City of Burlington, which offer is in the form of a proposed amendment to an existing ordinance; and the parties having waived hearing in the matter and the Commission having considered the stipulated evidence of record and the brief filed by the City of Burlington and being fully advised in the premises, makes and files the following Findings of Fact and Declaratory Ruling.

FINDINGS OF FACT

1. That the Burlington Policemen's Benevolent Association, hereinafter referred to as the Association, is a labor organization that maintains offices at Burlington, Wisconsin.

2. That the City of Burlington, hereinafter referred to as the Municipal Employer, has its offices at Burlington, Wisconsin.

3. That based on a petition filed by the Association and after an investigation conducted by the Commission's agent, the Commission found that the conditions precedent to the initiation of compulsory, final and binding arbitration pursuant to Section 111.77 of MERA had been met and issued an Order directing the Association and the Municipal Employer to file "final offers" in written form and to select an arbitrator from a panel of arbitrators submitted to the parties 1/; that, pursuant to said Order the parties selected James L. Stern, Arbitrator, and the Commission issued an Order appointing him Arbitrator to issue a final and binding award in the matter 2/ ; that a hearing in the matter was scheduled by Arbitrator Stern for September 16, 1975.

1/ Decision No. 13777, June 30, 1975.

2/ Decision No. 13777-A, July 16, 1975.

4. That the Association and the Municipal Employer have previously bargained concerning wages, hours and working conditions for law enforcement personnel represented by the Association for the years 1973 and 1974; that when the Association and Municipal Employer reached agreement concerning wages, hours and working conditions for 1973, said agreement was drafted in the form of an ordinance (Ordinance No. 769(34)) and adopted by the Municipal Employer's City Council on April 4, 1974; that thereafter the Association's negotiator submitted a letter to the Municipal Employer, which in effect acknowledged that the Association agreed to the terms embodied in the ordinance; that although the Association and Municipal Employer bargained concerning wages, hours and working conditions for 1974, they failed to reach agreement and, on September 3, 1974, the Municipal Employer's City Council adopted an ordinance (Ordinance 799(13)) which renewed Ordinance No. 769(34) for the year 1974 with certain amendments and modifications to reflect the changes in wages, hours and working conditions incorporating the Municipal Employer's proposals made during negotiations in 1974; that throughout the negotiations for wages, hours and working conditions for 1975, the Municipal Employer has made proposals in bargaining, based on changes that it proposed to make in Ordinance 769(34) as amended and modified by Ordinance 799(13).

5. That the Municipal Employer's "final offer" as of April 23, 1975, the date of the informal investigation conducted by the Commission's agent, consisted of certain proposed changes in Ordinance 769(34) as amended by Ordinance 799(13), some of which had been tentatively agreed upon by the Association during the course of the negotiations; and that, pursuant to its right under Section 111.77(3)(b) of the MERA, the Municipal Employer amended its "final offer" on September 9, 1975 by adding a proposed grievance procedure to be included in said ordinance as amended.

6. That the Association's "final offer" as of April 23, 1975, the date of the informal investigation conducted by the Commission's agent, consisted of certain proposed changes in wages, hours and working conditions some of which had been tentatively agreed upon during the course of negotiations; that pursuant to its right under Section 111.77(3)(b) of the MERA, the Association amended its "final offer" on or before September 11, 1975; that said amended "final offer" of the Association read in relevant part as follows:

> "Everything in the previous last offer is hereby withdrawn, except for Article VII, Grievance Procedure, in its entirety.
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> The Association accepts all of the previous ordinances of the City of Burlington, so long as they are in contract form, the duration of which is January 1, 1975 through December 31, 1975, with all matters being retroactive.
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> The Association accepts the proposition of the City of Burlington that there are five open issues:
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> 1. Salary Increase. The City's present position is 8%. The Association asks for 21.1%, effective January 1, 1975.
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> 2. Work Week. The City asks for a 42 1/2 hour work week. The Association asks for a 40 hour work week, with time and one-half to be paid after 40 hours and no comp time to be required.

3. In the previous grievance procedure which was submitted in the Association's last submission remains on the table, as opposed to the City of Burlington's modification. Where State law requires a different proceeding than is set forth here, the State law shall be followed.

4. Life Insurance. The City's position is no change. The Association asks for $1,000.00 double indemnity additional life insurance.

5. The City asks for an ordinance. The Association asks for a one year contract, with both parties signatory thereto."

7. That at the outset of the hearing before Arbitrator Stern on September 16, 1975, the Association challenged the legality of the Municipal Employer's "final offer" and the Association requested that the hearing be adjourned for the purpose of determining whether the Arbitrator could properly consider the Municipal Employer's "final offer" which in the view of the Association was illegal; that thereafter by letter dated September 29, 1975 Arbitrator Stern closed the hearing and relinquished jurisdiction in the matter on the basis of his understanding that the Association intended to file a petition for declaratory ruling on or before September 26, 1975 and that the Association did not so file; and that thereafter, on October 8, 1975, the Association filed the instant petition.

Based on the above and foregoing Findings of Fact, the Commission makes the following

DECLARATORY RULING

That the "final offer" of the Municipal Employer as amended on September 11, 1975 which was pending before Arbitrator Stern at the hearing conducted by him on September 16, 1975 was not an illegal offer and could properly have been selected by Arbitrator Stern for incorporation into Ordinance 769(34) as amended by Ordinance 799(13) and, upon request by the Association, to be reduced to a written and signed collective bargaining agreement.

Given under our hands and seal at the City of Madison, Wisconsin this 11th day of May, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING DECLARATORY RULING

ASSOCIATION'S POSITION:

The parties waived hearing based on a stipulation and written arguments. The Association failed to file a brief in support of its position and the Commission therefore deems the Association's position as set out in paragraphs five and six of the petition to be its position herein. Those paragraphs read as follows:

> "5. It is petitioner's position that the employer is under a duty to reduce an agreement to writing and have it signed by both parties where requested. It is further the petitioner's position that in the arbitration phase of a collective bargaining process the arbitrator may not adopt an offer which is representative of an unfair labor practice on its face.
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> 6. The parties hereto negotiated to impasse. The City of Burlington offered merely an ordinance as its final offer in binding arbitration. The representative of the employees (union) demanded a contract as its position on that issue. The arbitrator is faced with the proposition that adoption of the last offer of the City would obviate the unfair labor practice provisions of Chapter 111.70, Wisconsin Statutes, and therefore it is argued by petitioner that it is beyond the power of the arbitrator to consider the last offer of the employer."

MUNICIPAL EMPLOYER'S POSITION:

The Municipal Employer's position is three-fold:

(1) First the Municipal Employer contends that its proposal does not necessitate that any collective bargaining agreement reached be embodied in an "ordinance". While the Municipal Employer acknowledges that its "final offer" is based on an assumption that the results of the arbitration would be embodied in the existing ordinance, it argues that this is merely a matter of convenience so that there is a common basis of reference for those changes in wages, hours and working conditions which are being made. Furthermore, the Municipal Employer argues that since the ordinance in question is not a "local law or regulation of a general or permanent nature", it is more in the nature of a resolution and there is no reason why it could not be signed by the parties.

(2) Secondly, the Municipal Employer contends that, if its offer is "illegal", its indication at the hearing before Arbitrator Stern that it was indifferent as to whether the award was incorporated in a collective bargaining agreement or an ordinance should be treated as an amendment since it was free to amend its final offer up to five days after the date of the hearing. The Municipal Employer contends that, since the purpose of the statute in question is to encourage the parties to settle their differences without the need for an arbitration award, Section 111.70(3)(b) should be read literally to mean "within five (5) days [either before or after] of the date of the hearing".

(3) Finally, the Municipal Employer argues that its "final offer" was not illegal since the offer does not constitute a refusal to sign a written document and that, since the parties never reached agreement in this case, an arbitrator's award will be substituted for the signed and written document, which Section 111.70(1)(d) contemplates where agreement is reached in bargaining.

DISCUSSION:

It is undisputed that the Municipal Employer had in prior years embodied the results of the collective bargaining process in an "ordinance" which was passed by its Common Council and signed by the Mayor. The form utilized allowed for signatures by representatives of the Association and in 1973 the Association's representative sent a letter after passage of the ordinance indicating its agreement with the ordinance. The Association apparently acquiesced in this practice until it filed its amended "final offer" with the Arbitrator on September 11, 1975. 3/ In that offer, it contended that there was an "issue" as to whether the Award should be incorporated in a collective bargaining agreement or an ordinance.

The Commission is satisfied that there is nothing illegal about a "final offer" which proposes to embody the awarded changes in wages, hours and working conditions in an existing ordinance governing wages, hours and working conditions. Section 111.70(1)(d), by defining collective bargaining as including "the reduction of any agreement reached to a written and signed document", makes it a per se violation for an employer or a union to refuse to do so. The Municipal Employer did not, on the facts in this case, refuse to reduce any agreement reached to a written and signed document.

As the Municipal Employer points out in its brief, the submission of "final offers" pursuant to Section 111.77(3)(b) requires a reference to existing wages, hours and working conditions as established by some identifiable document. In the Stevens Point case 4/ the Commission found that an offer which was not drafted in the form of a complete collective bargaining agreement and merely identified those aspects of wages, hours and working conditions which were still in dispute was a proper "final offer" for consideration by the Arbitrator. The question of whether the Municipal Employer in this case would violate its duty to bargain in good faith if the Arbitrator were to select its "final offer", as it presently reads, and subsequently refused to incorporate the award into a signed and written document (including the terms contained in the existing ordinance) is not before the Commission and need not be addressed herein. 5/

It should be noted that, since the Arbitrator appointed by the Commission has relinquished jurisdiction and in any event is not

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3/ The record herein will not support a finding that the Association raised this "issue" at any time prior to September 11. There is an indication in the Employer's brief that the Association may have delivered a copy of a proposed "collective bargaining agreement" to its City Attorney on September 3, 1975 without explanation.

4/ City of Stevens Point, (Fire Dept.) (12652-B and 12652-C) 9/74 and 10/74.

5/ Furthermore, the Commission deems it unnecessary to determine whether the "amended" offer of the Municipal Employer was timely made.

presently available to resume hearing in the matter, the Commission has today issued an Order setting aside his appointment and submitting a new panel of arbitrators to the parties. 6/ After a new arbitrator has been selected by the parties and appointed by the Commission, he will set a new hearing date in the matter. Either party may, pursuant to its right under Section 111.77(3)(b) amend its final offer within five days of the hearing date set by said arbitrator.

Dated at Madison, Wisconsin this 4th day of May, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Howard S. Bellman, Commissioner

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Herman Torosian, Commissioner

6/ Decision No. 13777-B, 5/76.