

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

EAU CLAIRE COUNTY INSTITUTIONS (Mt. Washington Home & Health Care Center) :
EMPLOYEES LOCAL 1744, AFSCME, AFL-CIO, : Case XXXV
Complainant, : No. 19721 MP-532
vs. : Decision No. 14080-A
EAU CLAIRE COUNTY, :
Respondent. :

Appearances:

Mr. Guido Cecchini, Business Representative, appearing on behalf of the Complainant.
Mr. Homer C. Middlestadt, Corporation Counsel, appearing on behalf of the Municipal Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Eau Claire County Institutions (Mt. Washington Home and Health Care Center) Employees Local 1744, AFSCME, AFL-CIO, having filed a complaint of prohibited practices on October 22, 1975 with the Wisconsin Employment Relations Commission, hereinafter the Commission, alleging that Eau Claire County committed prohibited practices within the meaning of Section 111.70(3)(a)4 of the Municipal Employment Relations Act (MERA); and the Commission having appointed Sherwood Malamud, a member of its staff, to act as Examiner, to make and issue Findings of Fact, Conclusions of Law and Orders pursuant to Section 111.07(5) of the Wisconsin Employment Peace Act as made applicable to municipal employment by Section 111.70(4)(a) of MERA; and hearing on said complaint having been held at Eau Claire, Wisconsin on November 13, 1975; and the Examiner having considered the evidence and oral arguments of the parties made at the hearing, and being fully advised in the premises makes and files the following Findings of Fact, Conclusions of Law and Order. 1/

FINDINGS OF FACT

1. That Eau Claire County Institutions (Mt. Washington Home and Health Care Center) Employees Local 1744, AFSCME, AFL-CIO, hereinafter Complainant, is a labor organization with offices located in Eau Claire, Wisconsin; that Complainant is the certified collective bargaining representative of certain employees employed at the Eau Claire County

1/ On April 29, 1976, the Examiner wrote the parties to inquire if they had any additional arguments to present concerning Article 9.01 of the 1975 agreement. Additional argument was presented by the parties and the record was closed in this matter on July 27, 1976. It should be noted that in his letter dated July 23, 1976, Mr. Cecchini enclosed a newspaper article which referred to statements made by the parties in an attempt to settle this matter. The newspaper article was inappropriately submitted and it was not considered by the Examiner in this decision.

Institutions (Mt. Washington Home and Health Care Center) 2/ located in Eau Claire, Wisconsin; and that Mr. Guido Cecchini is the principal representative of Complainant for purposes of collective bargaining and contract administration.

2. That Eau Claire County, hereinafter Respondent, is a municipal employer with its principal offices located in Eau Claire, Wisconsin; that its principal representative for purposes of bargaining is its Corporation Counsel, Mr. Homer Middlestadt; and that the Chairman of the Personnel Committee of the Board of County Supervisors of Eau Claire County is Mr. John Duffy.

3. That Complainant is a member of the Eau Claire County Joint Council of Unions, AFSCME, AFL-CIO, hereinafter Joint Council, which is comprised of locals of the American Federation of State, County and Municipal Employees (AFSCME) who are the exclusive collective bargaining representatives of employees employed in the following departmental units; Highway, Social Services (clerical and professional) courthouse and the Institutions (Complainant herein); that Joint Council and Respondent were parties to a collective bargaining agreement which was in effect from January 1, 1973 through December 31, 1974, which in material part stated as follows:

"DURATION AND EXECUTION

This Agreement shall be effective as of the 1st day of January, 1973 and shall remain in full force and effect through the 31st day of December, 1974. It shall automatically be renewed from year to year thereafter unless either party shall notify the other in writing on or before the 1st day of June, 1974 that it desires to modify this Agreement. Negotiations extending into 1975 shall extend the terms of this Agreement and any economic benefits granted shall be retroactive to January 1, 1975 unless otherwise agreed."

and that on May 27, 1975 Joint Council and Respondent entered into a collective bargaining agreement effective from January 1 through December 31, 1975 which in material part provided, as follows:

"ARTICLE 9

DURATION AND EXECUTION

9.01 This Agreement shall be effective as of the 1st day of January, 1975, and shall remain in full force and effect through the 31st day of December, 1975. Negotiations extending into 1976 shall extend the terms of this Agreement and any economic benefits granted shall be retroactive to January 1, 1976, unless otherwise agreed. Either party may request negotiations for a new collective bargaining agreement by submitting their request on or before August 1, 1975, together with specific demands and changes to the existing Agreement. Within thirty (30) days of receipt of such request the other party shall submit their request or counter

2/ The Commission Certified Complainant as the exclusive bargaining representative of certain employees employed at Respondent's Home and at the Mt. Washington Sanatorium in Eau Claire County (6183) 12/62 and that the Commission certified Complainant as the exclusive bargaining representative of certain employees employed at Respondent's Hospital in Eau Claire County (7649) 8/66.

proposals and the parties shall within fifteen (15) days thereafter schedule their first meeting.

9.02 In the event either party desires to amend the terms of this Agreement, the moving party shall give a fifteen (15) day notice to the other party setting forth the proposed amendment. The fifteen (15) day notice may be waived by mutual agreement. Any amendments mutually agreed to shall be reduced to writing and signed by both parties."

4. That the member of Complainant conveying the printed agreements for distribution to bargaining unit members of the Institutions was involved in an accident causing the distribution of the agreement to be delayed until July, 1975; however, on July 18, 1975, 3/ at a special meeting of its membership, Complainant gathered the proposals to be submitted to Respondent for inclusion in a successor agreement; that on July 31, Cecchini, Complainant's Business Representative telephoned Respondent's Corporation Counsel, Middlestadt to advise him of Complainant's intent to submit proposals for a 1976 agreement and Cecchini indicated those proposals would be submitted soon after August 1, 1975.

5. That on or about August 1, 1975, three of the four member locals of the Joint Council of Unions, namely the Highway, Social Services (professional and clerical) and Courthouse submitted requests together with proposals for a new collective bargaining agreement to take effect at the expiration of the 1975 collective bargaining agreement.

6. That on August 7, Complainant mailed and on August 8, Duffy Chairman of Respondent's personnel committee received Complainant's proposals for an agreement which would take effect at the expiration of the 1975 agreement.

7. That on August 12, Cecchini mailed the following letter to Duffy, which letter in material part states as follows:

"As you know the requests of Local 1744 were submitted five days late. Local 1744 President Ruth Risler has asked me to remind you that because of the prolonged negotiations and the lateness of the execution of the agreement, it was not possible to fulfill the time limitations provided for in section 9.01.

As your Committee probably did not act on the proposals anyway, we expect that the unavoidable tardiness will be excused."

and that by said letter Complainant demanded of Respondent that it negotiate with Complainant concerning the wages, hours and conditions of employment of certain employees employed by Respondent at the Mt. Washington Home and Health Care Center.

8. That as a result of Complainant's failure to submit its request together with written proposals for a successor agreement by August 1, Respondent has refused to negotiate with Complainant for a successor agreement to the 1975 collective bargaining agreement, and it continues to refuse to bargain with Complainant.

9. That since the 1975 agreement did not provide for the automatic renewal of its terms in the event a timely request to

3/ Unless otherwise indicated, all dates refer to 1975.

open same were not made, the 1975 agreement expired on December 31, 1975 unless a successor thereto were negotiated.

Based on the above Findings of Fact, the Examiner makes the following

CONCLUSIONS OF LAW

1. That the Eau Claire County Institutions (Mt. Washington Home and Health Care Center) Employees Local No. 1744, AFSCME, AFL-CIO is the exclusive bargaining representative of certain employees employed by Respondent in an appropriate collective bargaining unit as that phrase is defined by Section 111.70(1)(e) of the Municipal Employment Relations Act.
2. That the terms and conditions of Article 9.01 of the 1975 agreement do not constitute a clear and unequivocal waiver of Complainant's right and Respondent's corresponding duty to bargain over wages, hours and conditions of employment for a successor to the 1975 agreement for the period from August 1, 1975 through December 31, 1975 and for the period subsequent to December 31, 1975; that although Complainant's request to open was untimely made under Article 9.01 of the agreement Complainant has not waived its right to bargain over wages, hours, and conditions of employment for certain of Respondent's employees employed in the Institutional bargaining units; and therefore Respondent by refusing to bargain with Complainant over a successor to the 1975 collective bargaining agreement has violated and is violating Section 111.70(3)(a)(4) of the Municipal Employment Relations Act.

Based upon the above Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER

IT IS ORDERED that the Respondent, Eau Claire County, its officers and agents, shall immediately;

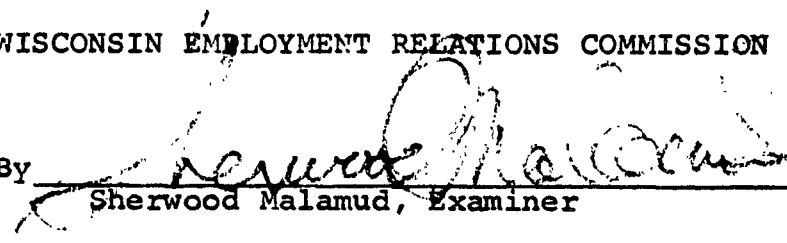
1. Cease and desist from refusing to bargain collectively with the Eau Claire County Institutions (Mt. Washington Home and Health Care Center) Employees Local 1744, AFSCME, AFL-CIO concerning wages, hours and conditions of employment for a successor agreement to the parties' 1975 collective bargaining agreement..
2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:
 - a. Upon request, bargain collectively with the Eau Claire County Institutions (Mt. Washington Home and Health Care Center) Employees Local 1744, AFSCME, AFL-CIO with respect to wages, hours and other conditions of employment for calendar year 1976 of employees employed in the appropriate collective bargaining units in Respondent's Mt. Washington Home and Health Care Center which is represented by Complainant.
 - b. Notify all employees by posting in conspicuous places commonly used for the posting of communications to employees copies of the notice attached hereto and marked "Appendix A". That notice shall be signed by Respondent and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced or covered by other material.

- c. Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days from the date of this Order as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 30th day of November, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Sherwood Malamud, Examiner

APPENDIX A

Pursuant to an Order of the Wisconsin Employment Relations Commission and in order to effectuate the policies of the Municipal Employment Relations Act, we hereby notify our employees that:

1. WE WILL cease refusing to bargain with Eau Claire County Institutions (Mt. Washington Home and Health Care Center) Employees Local 1744, AFSCME, AFL-CIO over wages, hours and conditions of employment for calendar year 1976.
2. WE WILL, upon request, bargain with Eau Claire County Institutions (Mt. Washington Home and Health Care Center) Employees Local 1744, AFSCME, AFL-CIO over wages, hours and conditions of employment for calendar year 1976.

County of Eau Claire

By _____
Chairman, Personnel Committee of the
Eau Claire County Board of Supervisors

Dated this _____ day of _____, 1976.

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS FROM THE DATE
HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY MATERIAL.

MEMORANDUM ACCOMPANYING FINDINGS OF
FACT, CONCLUSIONS OF LAW AND ORDER

Complainant charges Respondent with violating Section 111.70(3)(a)4 of the Municipal Employment Relations Act (MERA) by refusing to bargain with Complainant for a successor to the 1975 agreement. Respondent admits that it refuses to bargain with Complainant. However, Respondent claims that it is not required to bargain with Complainant for a successor agreement, because Complainant's request to open the contract was untimely made. Respondent argues that by filing its request to open the agreement in an untimely fashion, Complainant waived its right to bargain for a successor agreement, and the 1975 agreement by its own terms, continues in effect for another year.

There is no factual issue concerning the refusal to bargain. Respondent admits that it has refused to bargain with Complainant for a successor agreement. The issue, here, is whether Complainant waived its right to bargain by attempting to open the contract in an untimely manner, and thereby renewing the 1975 agreement for one additional year.

Complainant introduced testimony justifying the untimely submission of its proposals. Complainant demonstrated that the negotiations for a 1975 agreement were protracted and did not conclude until May 27, 1975. Furthermore, it introduced evidence, that an unfortunate automobile accident involving the member of Complainant conveying the printed agreement to members of the Institutions unit prevented distribution of the printed agreement to employees of the Institutions until July, 1975.

The Examiner found these explanations lacking. First, the other three local union components of the Joint Council were able to submit their proposals in a timely manner. Secondly, the record demonstrates that the proposals for the Institutions were collected by July 18, 1975 which still gave Complainant time to submit its proposals by August 1.

To determine the impact of Complainant's untimely request to open negotiations, an examination of the 1975 agreement and its predecessor must be made. The Duration and Execution clause of the 1973-1974 agreement provided that:

" . . . It [the agreement] shall automatically be renewed from year to year thereafter unless either party shall notify the other in writing on or before the 1st day of June, 1974 that it desires to modify this agreement. Negotiations extending into 1975 shall extend the terms of this Agreement and any economic benefits granted shall be retroactive to January 1, 1975 unless otherwise agreed."

Article 9.01 of the 1975 agreement provides that:

" . . . Negotiations extending into 1976 shall extend the terms of this Agreement and any economic benefits granted shall be retroactive to January 1, 1976 unless otherwise agreed. Either party may request negotiations for a new collective bargaining agreement by submitting their request on or before August 1, 1975, together with specific demands and changes to the existing agreement. Within thirty (30) days of receipt of such request the other party shall submit their request or counter proposals and the parties shall within (15) days thereafter schedule their first meeting."

The parties made several changes in the duration clause from 1973-74 to the 1975 agreement. The request to open negotiations for a new contract was moved from June 1 to August 1 in the 1975 agreement, and under the 1975 agreement, specific proposals and changes to the agreement had to accompany the request to open. Furthermore, a fixed schedule for the submission of counter proposals and the scheduling of the first negotiation session were added to the 1975 agreement. The parties preserved the provision guaranteeing retroactivity should negotiations extend beyond January 1, 1976. However, what is significant for purposes of this proceeding, is the deletion of the provision establishing the automatic renewal of the agreement for an additional year should a party fail to open the agreement. Absent the automatic renewal provision, failure to timely open the 1975 agreement does not necessarily result in the automatic extension of the agreement.

Respondent argues, nonetheless, that the 1975 agreement automatically renewed itself when Complainant failed to submit its request and proposals to reopen by August 1. Respondent interprets Article 9.01, as follows:

"It is important to scrutinize the language applicable to the right to negotiate changes of the 1975 contract. The language of 9.01 states, in part: 'Either party may request negotiations for a new collective bargaining agreement by submitting their request on or before August 1, 1975 together with specific demands and changes to the existing Agreement.'

This language provides a bifurcated condition:

- A. If either of the parties desire to negotiate a new contract for the next succeeding year, notice must be given by August 1, 1975; and
- B. If such negotiations are requested the specific changes and demands must be submitted on or before August 1, 1975.

The changes and demands are applicable to the 'Existing Agreement' and if they desire a 'new' agreement, the notice requirement must be met."

Complainant's charge is based upon Respondent's refusal to bargain. The Complainant alleges a statutory rather than a contractual violation. The Examiner's interpretation of the agreement is limited to determine if Complainant waived its statutory right to bargain for a 1976 agreement. Consequently Respondent may be excused from bargaining with Complainant if the 1975 agreement renews itself or if Complainant by clear and unequivocal language or conduct waived its statutory right to bargain with Respondent. 4/

Article 9.01 clearly establishes a set schedule for bargaining. However, it does not provide for the automatic renewal of the agreement should no request or an untimely request be submitted to open the agreement. 5/ There is no other provision in the agreement and there is no evidence of record from which the Examiner could infer that Complainant waived its right to bargain with Respondent over wages, hours

4/ City of Brookfield (11406-A and B) Aff'd Waukesha County Cir. Ct. 6/74; Fennimore Jt. School Dist. (11865-A and B); Madison Jt. School Dist. (12610); Village of Shorewood (13024); City of Menomonie (12674-A & B) City of Milwaukee (13495); Milwaukee County (12739-A, B). 1/75, 2/75.

5/ It should be noted that neither party argued that Article 9.02 applies to the facts of this case.

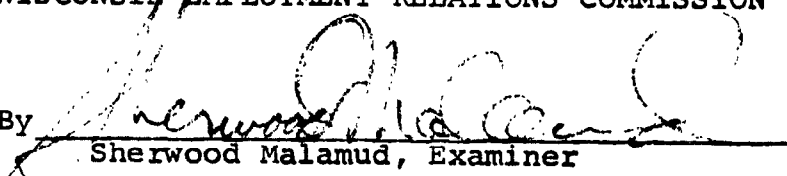
and conditions of employment for calendar year 1976 once the 1975 agreement expired. The record supports a contrary inference that the statutory duty to bargain was not waived by Complainant. This construction of the agreement is most reasonable in light of the deletion from Article 9.01 of the automatic renewal provision and the amending process established by Article 9.02 which permits a party to initiate the amendment of the 1975 agreement upon providing a fifteen day notice to the other party.

Although Complainant's untimely request may have affected certain contractual rights derived from a timely demand for bargaining, i.e. guaranteed retroactivity and a bargaining schedule which binds the Employer as well, it did not defeat its statutory right to bargain. Furthermore, Complainant's request made pursuant to its statutory right to bargain was not premature in that it was made during a period which the parties had established as appropriate for bargaining over a successor agreement. Accordingly, Complainant's request on August 8 may not have imposed on Respondent a contractual duty to bargain, but it did impose such a statutory duty. For all of the aforementioned reasons, the Examiner has ordered Respondent, upon Complainant's request, to engage in collective bargaining for a successor to the 1975 agreement. It should be noted in this regard however that the Examiner has not determined the effect of Complainant's untimely request vis-a-vis the contractual guarantee of retroactivity in light of the statutory nature of the within charge.

Dated at Madison, Wisconsin this 30th day of November, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Sherwood Malamud, Examiner