

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SHEBOYGAN COUNTY LAW ENFORCEMENT
EMPLOYEES LOCAL NO. 2481
WISCONSIN COUNCIL OF COUNTY AND
MUNICIPAL EMPLOYEES, AFL-CIO,

Complainant,

vs.

SHEBOYGAN COUNTY,

Respondent.

Case XXV
No. 20250 MP-594
Decision No. 14423-B

Appearances:

Lawton & Cates, Attorneys at Law, by Mr. Richard V. Graylow,
appearing on behalf of the Complainant.

Mr. Alexander Hopp, Corporation Counsel, Sheboygan County,
appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Local 2481, Sheboygan County Law Enforcement Employees of the Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO having on March 8, 1976 filed a complaint with the Wisconsin Employment Relations Commission wherein it alleged that Sheboygan County had committed prohibited practices within the meaning of the Wisconsin Municipal Employment Relations Act; and the Commission having appointed Byron Yaffe, a member of the Commission's staff, to act as Examiner to make and issue Findings of Fact, Conclusions of Law and Order as provided in sections 111.70(4) and 111.07 of the Wisconsin Statutes and pursuant to notice, hearings on said complaint having been held at Sheboygan, Wisconsin, on April 14, 1976 and October 21, 1976 before the Examiner and the Examiner having considered the evidence and the arguments and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Local 2481, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as the Complainant, is a labor organization representing all law enforcement personnel having the power of arrest employed by Sheboygan County, having its principal offices at Sheboygan, Wisconsin.

2. That Sheboygan County, hereinafter referred to as the Respondent, is a "municipal employer" within the meaning of section 111.70(1)(a) of the Wisconsin Statutes, the operation and control of which being vested in the County Board of Supervisors, and having its principal office at the Sheboygan County Courthouse, Sheboygan, Wisconsin.

3. That on September 8, 1975 Complainant was certified as the exclusive bargaining agent for all law enforcement personnel having the power of arrest employed by the Respondent, excluding the Sheriff, Inspectors, supervisory and managerial employees, and all other County employees.

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4. That collective bargaining sessions between the parties (the Respondent being represented by the County Board's Personnel Committee and Corporation Counsel, Alexander Hopp) were scheduled and held on October 15, 1975, December 4, 1975, January 21, 1976 and February 11, 1976, and that no agreement was reached during said meetings.

5. That on March 8, 1976 Complainant filed a complaint with the Commission alleging that during said period the Respondent had engaged in conduct which constituted a refusal to bargain in good faith in violation of Section 111.70(3)(a)(4) of Statutes.

6. That a bargaining session was held on March 10, 1976 during which the aforementioned complaint was discussed and during which no bargaining over the substantive issues in dispute occurred. This session was adjourned at the Respondent's initiative.

7. That the parties tentatively agreed to meet on March 23, 1976, but that said meeting was cancelled by the Respondent because the members of the Respondent's Personnel Committee were angry about the Complainant's filing of the aforementioned refusal to bargain complaint.

8. That by letter dated March 24, 1976, the Complainant was advised by Respondent's Corporation Counsel that the Respondent's Personnel Committee would be asked to reconsider its decision not to meet with the Complainant, and that the Complainant should attempt to keep open certain dates for further negotiations in the event a meeting could be arranged.

9. That in response to Mr. Hopp's aforementioned letter, the Complainant advised Hopp, by letter dated March 26, 1976, that it was setting aside two dates, April 8 and 19, 1976, for such a meeting.

10. That on April 2, 1976 the Complainant filed a motion requesting the Examiner to declare that the pending refusal to bargain complaint did not constitute a bar to continued collective bargaining between the parties.

11. That on April 2, 1976 the Complainant amended its complaint to incorporate all allegations contained in the original complaint in its first count, but also to include in a second count the specific allegation of a refusal to bargain based upon the Respondent's alleged position that the pending complaint allowed it to hold in abeyance its duty to bargain collectively with the Complainant.

12. That on September 3, 1976, Complainant stipulated to the dismissal of the first count in its amended complaint, but advised the Commission that it wished to proceed on the second count.

13. That the parties reconvened negotiations on or about April 6, 1976 and have since utilized the arbitration procedures set forth in Section 111.77 Stats. for the resolution of the bargaining impasse resulting therefrom.

14. That at the hearing conducted on October 21, 1976 the Respondent stipulated that the pending refusal to bargain complaint which was filed against it did not excuse it from meeting its bargaining obligation until the resolution of said complaint.

CONCLUSION OF LAW

That the termination of the meeting on March 10, 1976 and the cancellation of the tentatively scheduled meeting on March 23, 1976 by the Respondent because of its anger over the Complainant's filing

of the abovementioned prohibited practice complaint did not constitute a refusal to meet at reasonable times and therefore did not constitute a refusal to bargain in good faith in violation of Section 111.70(3)(a)(4) and (1) Stats.

That the Respondent has not in any other regard committed prohibited practices within the meaning of Section 111.70(3)(a)(4) and (1) Stats.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law the Examiner makes the following

ORDER

That the complaint filed in the instant matter be and the same hereby is dismissed.

Dated at Madison, Wisconsin this 5th day of May, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Byron Yaffe, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The complaint essentially alleges that the Respondent, by terminating the negotiation meeting on March 10, 1976 and by cancelling the scheduled meeting on March 23, 1976 because of the refusal to bargain complaint filed against it by the Complainant, engaged in conduct amounting to a refusal to bargain in good faith in violation of Sections 111.70(a)(4) and (1) Stats.

The Respondent argues that the temporary suspension of bargaining shortly after the Complainant filed the original refusal to bargain complaint amounted only to a cooling off period, and did not reflect an unwillingness on the part of the Respondent to continue bargaining because of the filing of the aforementioned complaint.

It seems clear to the Examiner that had the Respondent unequivocally cut off negotiations because the refusal to bargain complaint had been filed against it, said conduct would itself constitute a refusal to bargain in violation of Section 111.70(3)(a)(4) and (1) Stats.

A question of more limited scope is presented in the instant proceeding however, and that is whether a municipal employer may defer bargaining for a short period of time after the union with whom it is bargaining files a prohibited practice complaint against it alleging that it has engaged in a refusal to bargain, in order to let tempers cool.

The duty to bargain contemplates that the parties must be willing to meet and confer at reasonable times. 1/ In effect, the issue as defined above raises the question whether the Respondent, by postponing bargaining for several weeks after the aforementioned refusal to bargain complaint was filed, refused to meet and confer at reasonable times.

The record demonstrates that when the Respondent terminated the meeting on March 10th and cancelled the meeting on March 23rd, members of Respondent's Personnel Committee were too angered over the filing of the complaint to engage in constructive and conciliatory negotiations. In light of this situation, it does not seem unreasonable to the Examiner for the Respondent to have sought a cooling off period before continuing the bargaining process. It must be noted in this regard that on March 24, Mr. Hopp on behalf of the Respondent wrote the Complainant, indicating that he would attempt to set up a meeting, that he would be available for such a meeting in early April, and that he was requesting the Complainant to hold open certain dates during that period in the event a meeting could be arranged. The above facts in the Examiner's opinion, do not reflect an intent by the Respondent to cut off or terminate negotiations because of the refusal to bargain complaint. Instead, the Respondent's conduct amounted to a temporary deferral of bargaining to allow tempers to cool and to prevent the bargaining relationship from deteriorating further by having the parties meet when hostile feelings were so intense.

In the Examiner's opinion, a temporary suspension of bargaining for the reasons set forth above does not constitute a refusal to meet

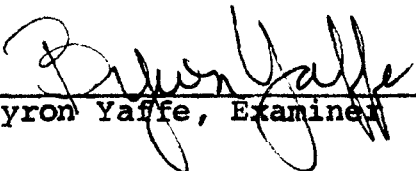
1/ Section 111.70(1)(d) Stats.

and confer at reasonable times, so long as the temporary nature of the suspension is understood. Here, the temporary nature of the suspension of bargaining was communicated to the Complainant in a timely manner, and in addition, it is apparent that one of the main purposes of the suspension was to avoid further deterioration in the bargaining relationship because of the emotional climate of the Respondent's Personnel Committee at the time.

Under these specific factual circumstances the Examiner concludes that the Respondent's temporary suspension of bargaining did not constitute a refusal to meet and confer at reasonable times and therefore did not violate Sections 111.70(3)(a)(4) and (1) Stats.

Dated at Madison, Wisconsin this 5th day of May, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Byron Yaffe, Examiner