

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

**Respondent.**

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

Examiner Byron Yaffe having issued his decision in the above-entitled matter, wherein he concluded that Respondent Sheboygan County had not refused to bargain collectively with Complainant Sheboygan County Law Enforcement Employees Local No. 2481, Wisconsin Council of County and Municipal Employees, AFL-CIO by terminating and cancelling bargaining meetings because of the anger of Respondent's representatives over the filing of a complaint by the Complainant with the Wisconsin Employment Relations Commission, wherein it had alleged that the Respondent had not bargained in good faith; and the Complainant having, pursuant to Section 111.07(5), Wisconsin Statutes, timely filed a petition with the Commission requesting that the decision of the Examiner be reviewed; and the Commission, having reviewed the entire record, the petition for review, and the briefs filed by the parties, now makes and issues the following:

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 of the Respondent.

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

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February 11, 1976; and that no agreement was reached during said meetings; and that on the latter date the parties agreed to meet again during the evening of March 10, 1976.

5. That on March 5, 1976, 1/ Counsel for the Complainant placed in the mails to the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, a complaint wherein the Complainant alleged that the Respondent engaged, and was engaging in, conduct which constituted a refusal to bargain in good faith with the Complainant during negotiations between the parties in seeking to arrive at a collective bargaining agreement covering wages, hours and working conditions affecting the employees in the collective bargaining unit previously set forth herein, and the Complainant alleged that, by said conduct, the Respondent had committed and was committing prohibited practices in violation of the municipal Employment Relations Act; that in the letter accompanying the complaint, Counsel for the Complainant set forth that he was mailing a copy of the complaint to the President of the Respondent Board of Supervisors; and that said complaint and covering letter were received by the Commission on March 8.

6. That on March 9, following a press release submitted by the Complainant, the Sheboygan Press, a daily newspaper published in Sheboygan, Wisconsin, carried a news story with regard to the allegations contained in the aforementioned complaint; that at approximately 7:00 p.m. in the evening of March 10, representatives of the Complainant and Respondent convened a meeting which had previously been scheduled for the purpose of collective bargaining; that at the outset of said meeting the Chairman of the Respondent's Personnel Committee inquired of the Complainant's representatives as to whether the Complainant had "information" that it might wish to add to the complaint; that, upon receiving a negative response, the representatives of the Respondent recessed the meeting to go into executive session, wherein the members of the Respondent's Personnel Committee, who were present, as well as the Respondent's Corporation Counsel, reviewed and discussed the allegations of the complaint; 2/ that as a result of filing of the complaint and the above noted news item, the members of the Respondent's Personnel Committee were "very much upset"; that the joint meeting reconvened shortly prior to 7:30 p.m. on said date, whereupon Respondent's Corporation Counsel informed representatives of the Complainant that he would prepare an answer to the complaint and indicated that he would see them "at the hearing"; and that thereupon the meeting was adjourned at the initiation of the Respondent, without the parties engaging in any collective bargaining, with an understanding that the parties would again meet during the evening of March 23.

7. That on March 11, the Commission, by the Hearing Examiner assigned to the matter, issued a Notice of Hearing on the complaint, wherein hearing was scheduled for the morning of April 5 at the Sheboygan County Courthouse, Sheboygan, Wisconsin, and wherein the Respondent was advised that it could file an answer to such complaint with the Commission on or before March 29; that copies of the Notice of Hearing were served on representatives of the Complainant, as well as the President of the Respondent's Board of Supervisors and its County Clerk; and that on March 16 Respondent's Corporation Counsel filed an answer to the complaint with the Commission and at the same time served copies thereof upon Complainant representatives and its Counsel; that on

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1/ All dates set forth hereinafter occurred in the year 1976.

2/ Respondent's Counsel obtained a copy of the complaint, which had been previously sent to the President of the Respondent's County Board, from the office of Respondent's County Clerk on March 10, prior to the evening meeting.

March 22 the Commission received, in writing, a request from Counsel for the Complainant to adjourn the hearing on the complaint to April 14, because of "scheduling problems" and in the same request said Counsel indicated that he had discussed the change in the hearing date with Respondent's Corporation Counsel who had indicated no objection thereto; and that as a result, on March 22, the Commission's Hearing Examiner issued a Notice postponing hearing to April 14 at the same time and place.

8. That on March 19 Respondent's Corporation Counsel, in a telephone conversation with Michael J. Wilson, an agent of the Complainant, advised Wilson that he (Respondent's Corporation Counsel) would be meeting with Respondent's Personnel Committee on March 22 and at such meeting that he would attempt to persuade the members thereof to meet and negotiate with the representatives of the Complainant during the meeting to be held on March 23; and that said Counsel would call Wilson to report his efforts in said regard; that during the morning of March 23 Respondent's Corporation Counsel called Wilson and advised that the Respondent's Personnel Committee would not meet with representatives of the Complainant that evening because of the pendency of the complaint proceeding and that the Respondent's Personnel Committee saw no purpose in any further meetings until the complaint proceeding was resolved; and that as a result the Respondent cancelled the meeting which was to be held during the evening of March 23.

9. That on March 23, after the above noted telephone conversation, Wilson directed the following letter to Respondent's Corporation Counsel:

"In your telephone call to me this morning you stated the Personnel Committee of the Sheboygan County Board of Supervisors had decided as follows:

1. To cancel the negotiation session scheduled for 7:00 p.m. today with Local 2481.
2. Not to meet and negotiate with Local 2481 until after a ruling was made on the pending prohibited labor practice charges filed by Local 2481 (WERC Case XXV No. 20250, MP-594 Decision No. 14423).

Local 2481 desires to meet and negotiate with the Personnel Committee of the Sheboygan County Board of Supervisors and cannot accept the Personnel Committee's refusal to negotiate. Should the Personnel Committee reconsider and decide to meet and negotiate with Local 2481, please so advise me immediately, so that a bargaining session can be arranged. I cannot assume the Personnel Committee will act any differently than has been reported to me this morning and as was apparent in the last meeting between the parties on March 10, 1976. I have requested the Union's legal counsel, Richard V. Graylow, to seek whatever direct legal recourse the Local Union has to enforce its rights to bargain collectively with Sheboygan County."

10. On March 24 Respondent's Corporation Counsel replied to Wilson by letter, which, in material part, contained the following.

"This will acknowledge receipt of your letter of March 23, 1976 today. As you well know, it is not within my authority to schedule meetings of the Personnel Committee nor do I have a right to vote on the decisions that the committee makes. I will however by copy of this letter forward your letter to the committee so that they may know your concerns.

By way of clarification I would like to again repeat that the Personnel Committee has never taken a position of refusal to negotiate. Its position presently is that inasmuch as the Union has said when the County is meeting with the union it is 'not negotiating in good faith'. Therefore, if the Union feels while the parties are together the County is violating the law then there is no purpose in further meetings as there will, in the Union's eyes, be further violations of the law.

At the time we tentatively scheduled the meeting for March 23rd it was with the understanding that the session would be held if the unfair labor practice charge had been resolved by then. You will recall that I expressed the hope that the litigation on that issue would not too badly fracture the feelings of the parties so as to prevent open discussions on their respective positions.

Mike, I think you will have to agree that when you find fault with something somebody's doing you really can't ask them to continue doing it and expect them to respond affirmatively.

I am sending a copy of this letter to Attorney Richard V. Graylow because under our legal ethics standards he is entitled to direct communication from me on all issues. The only reason I am writing to you is that last Friday he refused to talk to me and asked you to do so and I am assuming he prefers that line of communication. I am still prepared to hear him out on the legal posture of the Union and would be most happy to communicate that to the committee if he cares to share it with me." 3/

". . .

I am requesting if possible you save the above open nights on your calendar so that if there is a change in position that the negotiations aren't unnecessarily delayed because of my busy calendar.

By copy of this letter I am asking the committee to reconsider its position when it meets a week from Tuesday night. It is my hope that prior to that meeting Attorney Graylow will provide me with some basis or assurance that our meeting with your bargaining team will not be used against us in the WERC proceeding."

11. That on March 25 Wilson responded, by letter as follows:

"I am in receipt of your letter of March 24, 1976. Regarding open dates for negotiations according to page 2 of your correspondence be advised that of the three (3) dates you suggest as open I should like to confirm two (2), that is, April 8th and April 15th, 1976.

It is understood that you are requesting the Personnel Committee to reconsider its decision not to meet and negotiate with Local 2481 at this time. I would suggest that negotiation sessions after April 15, 1976, be scheduled as well. If such meetings become unnecessary, that is, a collective bargaining

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3/ The letter also set forth said Counsel's evening commitments from Monday, March 29 through Thursday, April 15, indicating that he was available for evening meetings on Thursday, April 8, and Wednesday and Thursday, April 14 and 15.

agreement is reached between the parties it would seem easier to cancel a schedule meeting than wait to find available dates in busy calendars in the event a collective bargaining agreement is not reached on April 8th or April 15, 1976."

12. That on April 2 the Complainant, by its Counsel, filed a "motion" and an "amended complaint" with the Commission; that copies thereof were sent to Respondent's Counsel by the Hearing Examiner and received by Respondent on April 5; that in the covering letter accompanying said pleadings the Examiner advised said Counsel that answer to same could be filed at the hearing scheduled for April 14; that in said "motion" Complainant moved that the Examiner issue an order finding that the pending complaint proceeding did not bar continued collective bargaining between the parties, and further, that the Complainant be permitted to amend the original complaint; that the "amended complaint" realleged the allegations in the original complaint, and in addition alleged that the Respondent since the filing of the original complaint engaged in further prohibited practices by further failing to bargaining in good faith, as characterized in the "amended complaint" as follows:

'2. Since the original 'COMPLAINT OF PROHIBITED PRACTICE' the County has refused and continues to refuse to bargain with this complaining Union. The decision of the County to refuse to bargain was communicated to this complaining Union by representatives of the County on numerous occasions and by various methods. For example, by way of illustration without limitation, on March 23, 1976, Mike Wilson was notified by County Corporation Counsel Alexander Hopp via telephone that the Personnel Committee of the County Board of Supervisors of the County of Sheboygan had decided to cancel the negotiation session scheduled for 7:00 p.m. on March 23, 1976. At that same time and occasion, Mike Wilson was informed that the Committee would not meet until a decision was rendered by the Wisconsin Employment Relations Commission in the instant proceedings.

3. On information and belief, the County's refusal to bargain is based upon its position that the pending Complaint relieves it of or holds in abeyance its duty to collectively bargain."

13. That the parties reconvened negotiations on or about April 6; that the Examiner commenced hearing on the complaint and amended complaint on April 14 at Sheboygan, however shortly after the opening of said hearing the Examiner, at the request of the parties, adjourned same indefinitely pending efforts of the parties to resolve their differences; that on May 24 the Complainant filed a petition 4/ with the Commission requesting the initiation of a final and binding arbitration procedure, pursuant to Sec. 111.77 of the Municipal Employment Relations Act, to resolve an alleged impasse between the parties in their negotiations with respect to the provisions to be included in a two year collective bargaining agreement for the years 1976 and 1977, covering the law enforcement employees involved in the instant proceeding; that following an informal investigation on said petition by a member of the Commission's staff, the Commission on August 24 issued an order 5/ requiring the parties to proceed to final and binding arbitration on the impasse found to be in existence, and on the same date the Commission furnished the parties with a panel of five neutral arbitrators, from which they could select a

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4/ Case XXVI.

5/ Dec. No. 14859.

single arbitrator in the matter; and that, after being notified of the selection of the arbitrator, the Commission on September 2 issued an order appointing said arbitrator for the purpose of issuing a final and binding award to resolve such impasse.

14. That also on September 3 the Complainant stipulated to the dismissal of the allegations set forth in the original complaint, as well as the same allegations contained in the amended complaint; but, that, however it desired to proceed to hearing on the allegations contained in the amended complaint, namely those allegations referring to the Respondent's actions during the meeting of March 10 and its cancellation of the negotiation meeting set for March 23; that thereupon, and on September 15, the Examiner set further hearing in the matter for October 21; and that such hearing was held and concluded on the latter date.

15. That during the course of the hearing on October 21 the Respondent stipulated that the complaint filed herein, alleging that the Respondent was refusing to bargain with the Complainant in violation of Sec. 111.70(3)(a)4 of the Municipal Employment Relations Act did not excuse the Respondent from meeting its obligation to bargain collectively until the allegations in the complaint were resolved.

16. That the Personnel Committee of the Respondent refused to negotiate during the evening of March 10 and refused to meet in negotiations on March 23 for the reason that the members thereof were angered by the filing of the complaint, as well as the news item appearing in the Sheboygan Press with regard thereto, and, further since the allegations in the complaint had not been resolved by March 23.

Upon the basis of the above and foregoing Revised Findings of Fact the Commission makes the following

#### REVISED CONCLUSION OF LAW

That, since the basis which motivated the members of the Personnel Committee of the Board of Supervisors and Sheboygan County to refuse to negotiate with representatives of Sheboygan County Law Enforcement Employees Local No. 2481, Wisconsin Council of County and Municipal Employees, AFL-CIO in the evening of March 10, 1976, as well as their refusal to meet with the representatives of said labor organization in negotiations on March 23, 1976, did not vitiate the duty of said representatives of Sheboygan County to bargain collectively with the representatives of said labor organization with respect to the terms and conditions of employment to be included in a collective bargaining agreement covering non-supervisory law enforcement personnel in the employ of Sheboygan County, Sheboygan County, by its duly authorized representatives, failed and refused to bargain collectively with Sheboygan County Law Enforcement Employees Local No. 2481, Wisconsin Council of County and Municipal Employees, AFL-CIO, and thereby committed prohibited practices within the meaning of Secs. 111.70(3)(a)4 and 1 of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Revised Findings of Fact and Revised Conclusion of Law, the Commission makes and issues the following

#### ORDER


IT IS ORDERED that the Respondent, Sheboygan County, its officers and agents, shall immediately:


- (1) Cease and desist from interrupting or terminating collective bargaining with Sheboygan County Law Enforcement Employees Local No. 2481, Wisconsin Council of County and Municipal Employees, AFL-CIO, as a result of the filing of a complaint of prohibited practices by said labor organization wherein it alleges that Sheboygan County had refused to bargain collectively in violation of Section 111.70(3)(a)4 and 1 of the Municipal Employment Relations Act, and/or on the basis that the allegations contained in such a complaint have not been resolved.
- (2) Take the following affirmative action which the Commission finds will effectuate the policies of the Municipal Employment Relations Act:
  - (a) Notify all non-supervisory law enforcement personnel by posting in conspicuous places in its offices where employees are employed, copies of the notice attached hereto and marked Appendix "A". Said notice shall be signed by a duly authorized representative of the Respondent, Sheboygan County, 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 ensure that said notices are not altered, defaced or covered by other material.
  - (b) Notify the Wisconsin Employment Relations Commission, in writing, within ten (10) days from the date of this Order as to what steps it has taken to comply herewith.

Given under our hands and seal at the City of Madison, Wisconsin this 9th day of March, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

APPENDIX "A"

Notice to All Employees

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 NOT interrupt or terminate collective bargaining with Sheboygan County Law Enforcement Employees Local No. 2481, Wisconsin Council of County and Municipal Employees, AFL-CIO, as a result of the filing of a complaint of prohibited practices by said labor organization, wherein it alleges that Sheboygan County has refused to bargain collectively in violation of Section 111.70(3)(a)4 and 1 of the Municipal Employment Relations Act, and/or on the basis that the allegations contained in such a complaint have not been resolved.

SHEBOYGAN COUNTY

By \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1978.

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 ORDER REVISING FINDINGS OF FACT,  
REVERSING CONCLUSION OF LAW, AND REVERSING ORDER

The Examiner's Decision:

The Examiner concluded that the County did not violate its duty to bargain collectively with the Complainant in violation of Section 111.70(3)(a)4 and 1 of the Municipal Employment Relations Act by refusing to negotiate during the evening of March 10 and by canceling the negotiation meeting on March 23, 1976, finding that the bargaining was merely temporarily suspended for the reason that the members of the County Personnel Committee were angered and that said committee members deferred bargaining to permit their tempers to cool and thus to prevent the bargaining relationship from deteriorating further by requiring the parties to meet when hostile feelings were so intense.

The Petition for Review:

The Complainant timely filed a petition for review of the Examiner's decision, and in its brief supported same, contended that there was insufficient evidence to establish the "anger" of the members of the Respondent's Personnel Committee, and even if said committee members were "angry", such anger did not relieve them of their statutory duty to bargain with representatives of the Complainant.

The Respondent's Corporation Counsel did not file a brief in response to the Complainant's brief in support of its petition for review, but rather relied on its brief submitted to the Examiner. In the brief filed with the Examiner the County contended that in essence, under the circumstances, the emotional reaction on behalf of the County's Personnel Committee was "high", and that "it was logical to conclude that good faith bargaining could not conclude on either the 10th or 23rd of March." The County further argued that it would be unwise to have negotiated on March 10 and on March 23 since there was no likelihood of obtaining any concessions from the County as a result of the personal feelings of the members of the Personnel Committee.

Discussion:

The Commission has revised the Examiner's Findings of Fact to more explicitly set forth the facts supported by the record. It is to be noted that in addition to the reasons for the Personnel Committee as set forth by the County Corporation Counsel, both in telephonic conversation on March 23 and in a letter on March 24, the Corporation Counsel also took the position that since the County was charged with not negotiating in good faith and thus violated the law, there would be no purpose in further meetings. While the Corporation Counsel did suggest further meetings, he desired an assurance that any such meetings with the Complainant's bargaining team would not be used against the County in the complaint proceeding.

We are of the opinion that the basis set forth by the County for refusing to continue negotiations on March 10 and for cancelling the March 23 meeting constitutes a refusal to bargain within the meaning of Section 111.70(3)(a)4 and 1 of the Municipal Employment Relations Act, and, therefore, we have reversed the Examiner's Conclusion of Law. To permit either representatives of a municipal employer or representatives of municipal employees to cancel negotiation sessions on the basis of becoming angered as a result of the filing of a prohibited practice complaint with the Commission would not be conducive of carrying out the policies expressed in the Statute. We recognize that the filing of a prohibited practice complaint alleging a refusal to bargain in good faith may in certain situations have a chilling effect on bargaining, but nonetheless, the parties' duty to bargain

in good faith does not cease because of the pendency of such a complaint. To hold otherwise would require a party to choose between its statutory right to file a prohibited practice complaint and its right to engage in good faith bargaining. The municipal employer herein, because of its anger, in essence, placed the union in such a position when it cancelled a bargaining session scheduled for March 23 and advised the union that it saw no purpose in any further meetings until the complaint proceeding was resolved. Contrary to the Examiner, we find that the employer's anger, some two weeks after the filing of a complaint by the union, does not relieve the employer's ongoing duty to bargain in good faith.

It is to be noted that, since the parties resumed bargaining, either prior to the termination of the hearing, we have not affirmatively ordered the County to bargain, but merely have ordered that it cease and desist from refusing to bargain in the future under similar circumstances.

Dated at Madison, Wisconsin this 9th day of March, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman  
Herman Torosian  
Herman Torosian, Commissioner