STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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| In the Matter of the Petition of<br><br>CITY OF SPARTA AND CITY OF SPARTA WATER UTILITY<br><br>Requesting a Declaratory Ruling Pursuant to Section 111.70(4)(b) Wisconsin Statutes, Involving a Dispute between said Petitioner and<br><br>LOCAL 1947-A WISCONSIN COUNCIL OF COUNTY AND MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO | Case VIII<br>No. 19480 DR(M)-68<br>Decision No. 14520 |

DECLARATORY RULING

City of Sparta and City of Sparta Water Utility having on November 26, 1975, filed a petition requesting the Wisconsin Employment Relations Commission to issue a Declaratory Ruling on whether the City of Sparta and City of Sparta Water Utility can insist to impasse that collective bargaining sessions be conducted in public and correspondingly, whether Local 1947-A, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, can insist to impasse that collective bargaining proceed in private; and the parties having waived hearing in the matter; and the Commission having considered the briefs and arguments filed by the parties and being fully advised in the premises, makes and files the following Findings of Fact and Declaratory Ruling.

FINDINGS OF FACT

1. That the City of Sparta and City of Sparta Water Utility, hereinafter referred to as the Municipal Employers, have their offices at Sparta, Wisconsin.

2. That Local 1947-A, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization that maintains its offices at Madison, Wisconsin.

3. That, although the employes of the said Municipal Employers are in separate bargaining units, negotiations of their separate contracts are held jointly with the Union.

4. That in September of 1975, the Union and Municipal Employers held a negotiating session for the purpose of bargaining proposed amendments to the current labor contract; that this and prior negotiating sessions were closed to the members of the news media and the general public.

5. That on or about October 7, 1975, the Common Council of the City of Sparta passed a resolution adopting the position that all City negotiations should be open to the public and news media.

6. That the Union indicated that it would not attend negotiating sessions which were open to the public and news media; that the Municipal Employers refused to attend any sessions which were not open to the public; and that subsequently scheduled negotiating sessions were cancelled.

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

DECLARATORY RULING

That a proposal by a municipal employer or labor organization that collective bargaining be conducted in public does not constitute a proposal regarding wages, hours and working conditions and therefore is not a mandatory subject of bargaining which can be insisted upon to the point of impasse; that the statutory mandate that the parties meet and confer at reasonable times in good faith imposes a duty on the parties to be willing to meet in private, bilateral negotiations and that accordingly, insistence to impasse by either party that such negotiations be conducted in public will be found to violate said party's duty to meet and confer at reasonable times in good faith as prescribed in Section 111.70(1)(d) of the Municipal Employment Relations Act, unless it can be demonstrated that extraordinary circumstances require that collective bargaining sessions be held in public; and conversely, absent such extraordinary circumstances, insistence by either party that such sessions be conducted in private will normally be found to be consistent with the statutory mandate that the parties meet and confer at reasonable times in good faith.

Given under our hands and seal at the City of Madison, Wisconsin this 7th day of April, 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

The Commission has previously held that a proposal that negotiations be conducted in public does not constitute a proposal regarding wages, hours and working conditions. Therefore, insistence upon same, to the point of impasse, has been found to constitute a prohibited practice within the meaning of the Municipal Employment Relations Act (MERA), and conversely resistence to a demand that bargaining sessions be held in public has been found not to constitute a prohibited practice within the meaning of the MERA. 1/

The Commission, in reaching this conclusion, also relied upon the definition of "collective bargaining" set forth in Section 111.70(1)(d) of the MERA 2/which states in material part:

> "'Collective bargaining' means the performance of the mutual obligation of a municipal employer, through its officers and agents and the representatives of its employes, to meet and confer at reasonable times, in good faith, with respect to wages, hours and conditions of employment. . . "

It is the considered judgment of the Commission that the statutory duty to meet and confer at reasonable times, in good faith imposes a duty on the parties to be willing to meet in private, bilateral discussions since it is the Commission's experience that collective bargaining sessions are normally more successful when conducted in private, bilateral discussions. This conclusion is consistent with the position taken by the Commission in Lake Geneva wherein it stated:

> "The Commission recognizes that it is conventional for the collective bargaining that is engaged [in] by parties governed by MERA to proceed in private, nonpublic sessions; that there are sound reasons for such procedures, including the reason that public statements of position tend to reduce the possibilities for compromise; and that some municipal employers and labor organizations prefer to bargain publicly, but this preference reflects an exception to the general analysis."

The legitimacy of the need for confidential exchanges in the negotiation process is also recognized in the Open Meetings of Govern-

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1/ City of Lake Geneva (12184-A and 12208-B) 5/74; and Walworth County (12690 and 12691) 5/74.

2/ The Commission recognizes that its decisions in Lake Geneva and Walworth County were based primarily on its conclusion that the question of whether negotiations should be conducted in public was not a question involving wages, hours and conditions of employment. In those cases, the proposal to hold public negotiation sessions was made by the employe organization which does not enjoy the statutory power to determine whether negotiations will be conducted in public. Although the Commission reaffirms its conclusion in those cases that the question of whether negotiations should be conducted in public is not a mandatory subject of bargaining the decision herein is premised as well on a finding that a municipal employer, which admittedly has the statutory power to determine whether negotiations will be held in public, violates its duty to meet at reasonable times in good faith if it exercizes that power without adequate justification, and the rationale of the Commission in the Lake Geneva and Walworth County cases is modified to that extent.

mental Bodies Act, Section 66.77, Wisconsin Statutes, hereinafter referred to as the Open Meetings Statutes, which declares it ". . . to be the policy of the State that the public is entitled to the fullest and most complete information regarding the affairs of government as compatible with the conduct of governmental affairs and the transaction of governmental business." 3/

In order to effectuate this policy, the Open Meetings Statute also provides: 4/

> "(3) Except as provided in sub. (4), all meetings of governmental bodies shall be open sessions. No discussion of any matter shall be held and no action of any kind, formal or informal, shall be introduced, deliberated upon, or adopted by a governmental body in closed session, except as provided in sub. (4). Any action taken at a meeting held in violation of this section shall be voidable."

Notwithstanding, this clearly declared public policy, the Statute recognizes that certain exceptions to the "open sessions" proviso may be necessary for "the conduct of governmental affairs and the transaction of governmental business." 5/

Those exceptions are spelled out in Section 66.77(4), Wisconsin Statutes. The exception pertinent to the issue discussed herein provides that: 6/

> "(4) A governmental body may convene in closed session for purposes of:
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> . . .
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> (d) Deliberating or negotiating on the purchasing of public property, the investing of public funds, or conducting other public business which for competitive or bargaining reasons require closed sessions".

Said section has already been found to apply to collective bargaining negotiations between municipal employers and labor organizations, 7/ and consequently, private collective bargaining sessions between municipal employers and labor organizations clearly do not violate the above-noted provisions of the Open Meetings Statute.

The Commission is of the opinion that its interpretation of MERA as normally requiring private, bilateral collective bargaining sessions need not frustrate the purpose of the Open Meetings Statute since it allows for public negotiations with the consent of the parties, and even without such consent, it does not restrict the right of governmental bodies to keep the public fully apprised of the positions of the parties and progress in collective bargaining negotiations. This may be accomplished through public discussions of said issue during meetings of such governmental bodies and by means of communications to the public through the

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3/ Section 66.77(1), Wisconsin Statutes.

4/ Section 66.77(3), Wisconsin Statutes.

5/ Supra, footnote 2.

6/ Section 66.77(4), Wisconsin Statutes.

7/ See Board of School Directors of Milwaukee vs. WERC (1969), 42 Wis. 2d 637 citing 54 Op. Atty. Gen. (1965) with approval.

news media. By utilizing such mechanisms, governmental bodies which are parties to the collective bargaining process can readily provide the public with full and complete information regarding governmental collective bargaining, which is a matter of legitimate public interest and concern. At the same time, through private bilateral collective bargaining, said governmental bodies and the labor organizations which represent their employes may explore and consider a myriad of problems without having to make commitments and decisions on all alternative solutions which may surface. The process of exploratory problem-solving, which is an essential ingredient to effective and successful collective bargaining, in many cases might be frustrated if the collective bargaining process were conducted in a public forum.

Thus, while there is a legitimate need for public knowledge and understanding of what transpires during the collective bargaining process between governmental bodies and the labor organizations which represent public employes, the Commission, in order to foster the effectiveness and success of such bargaining, concludes that the public's right to know must normally be achieved through mechanisms other than public collective bargaining sessions.

The Commission is persuaded that this conclusion is the most viable means of harmonizing the Open Meetings Statute with the mandates and intent of the MERA. In this regard, it must be noted that the Wisconsin Supreme Court in Board of School Directors of Milwaukee vs. WERC, 8/ found that governmental bodies had the right to make determinations under the Open Meetings Statute (at that time Section 14.90, Wisconsin Statutes) as to whether to meet in closed sessions pursuant to the exceptions set forth in the Statute provided that any tentative agreement reached was considered at a public meeting before a vote is taken on its adoption. However, it is also important to note that this decision occurred prior to the amendments to the MERA in 1971 which created a duty on the part of municipal employers and labor organizations to bargain 9/ with the concurrent duty to meet and confer at reasonable times, in good faith. 10/ Because the duty to bargain has since been legislatively imposed upon governmental bodies, the Commission is of the opinion that such governmental bodies may no longer decide unilaterally to conduct collective bargaining sessions in public or private.

Because it has been the Commission's experience that collective bargaining can normally be conducted more efficiently and successfully in private, bilateral discussions and because the Commission believes it has the duty to attempt to effectuate the policies of the MERA, in a manner which is in harmony with the intent and mandates of other state statutes, it herein concludes that the objectives of the MERA and the Open Meetings Statute can best be effectuated and reconciled by finding that except for extraordinary circumstances, neither governmental bodies nor labor organizations who are parties to a collective bargaining relationship can unilaterally insist that collective bargaining sessions be conducted in public. Such sessions may be conducted in public with the consent of both parties. In addition, if it can be demonstrated

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8/ Supra, footnote 6.

9/ Sections 111.70(3)(a)(4) and 111.70(3)(b)(3). Although Section 66.77 has also been amended since the decision in that case, said amendments would not appear to be relevant herein.

10/ Section 111.70(1)(d).

that there are no adequate alternative means by which the public can be provided accurate and complete information as to the position of the parties and the status of collective bargaining between governmental bodies and the labor organizations which represent public employes, insistence upon public negotiations by either party might be found to be justified by the Commission. Thus, the Commission concludes that, although the statutory mandate to meet and confer at reasonable times, in good faith, pursuant to Section 111.70(1)(d)(a) creates a requirement that the parties be willing to meet in private absent agreement to the contrary, said requirement is not present if it can be demonstrated on the facts in a given case that the purpose and intent of the Open Meetings Statute would inevitably be violated by either party's insistence that all collective bargaining sessions be conducted in private.

Dated at Madison, Wisconsin this 7th day of April, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
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