STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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| In the Matter of the Petition of<br><br>CITY OF WISCONSIN RAPIDS<br><br>and<br><br>WISCONSIN RAPIDS FIREFIGHTERS<br><br>Requesting a Declaratory Ruling Pursuant to Section 111.70(4)(b), Wis. Stats., Involving A Dispute Between the Parties | Case XXII<br>No. 20317 DR(M)-69<br>Decision No. 14543-A |

ORDER DENYING REQUEST FOR DECLARATORY RULING

Wisconsin Rapids Firefighters having on March 23, 1976 1/ filed a petition wherein it requested the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, to issue a Declaratory Ruling pursuant to section 111.70(4)(b) of the Municipal Employment Relations Act (MERA) regarding the duty to bargain on a work assignment procedure which was unilaterally implemented by the Fire Chief; and hearing having been conducted on May 5 before Amedeo Greco, a member of the Commission's staff; and the Commission having considered the evidence and arguments adduced by the parties and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order Denying Request for Declaratory Ruling.

FINDINGS OF FACT

1. That Wisconsin Rapids Firefighters, hereinafter referred to as the Association, is a labor organization which maintains its offices at Wisconsin Rapids, Wisconsin.

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

3. That the Association at all times material herein has been the collective bargaining representative for all non-supervisory firefighters in the employ of said Municipal Employer.

4. That the parties are privy to a collective bargaining agreement; that Article III therein, entitled Reservation of Rights, provides inter alia that:

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1/ Unless otherwise indicated, all dates hereinafter refer to 1976.

"The Union recognizes the right of the City and Chief of the Fire Department, to operate and manage its affairs in all respects. The Union recognizes the exclusive right of the Chief of the Fire Department to establish reasonable departmental rules and procedures.

"The City and the Chief of the Fire Department, have the exclusive right and authority to schedule overtime work as required in the manner most advantageous to the City, commensurate with the applicable ordinances or resolutions providing for overtime compensation, as outlined in this Agreement, to Firefighters (covered by this AGREEMENT.)

"It is understood by the parties that every duty connected with the Fire Department operations enumerated in job descriptions is not always specifically described and it is intended that all such duties shall be performed by the employees.

"The Chief of the Fire Department, and the Police and Fire Commission reserve the right to discipline or discharge for cause. The City reserves the right to lay off personnel of the department. The City and the Chief of the Fire Department shall determine work schedules consistent with this Agreement and establish methods and processes by which such work is performed. The City and the Chief of the Fire Department shall have the right to transfer employees within the Fire Department in a manner most advantageous to the City.

"The City, the Chief of the Fire Department, and the Police and Fire Commission shall retain all rights and authority to which by law they are entitled.

"The City shall have exclusive authority to transfer any governmental operation now conducted by it to another unit of government, and such transfer shall not require any prior negotiations or the consent of any association, group organization, or labor organization whatsoever and furthermore, upon transfer, all Agreements are terminated, including this Agreement as pertaining to personnel of the department affected by the transfer.

"The City shall have the authority to consolidate the operations of two or more departments within the Fire Department and to reorganize the operations with the Fire Department.

"The Union recognizes that the City has Statutory and Charter rights and obligations in contracting for matters relating to municipal operations. The right of contracting or subcontracting is vested in the City.

"The Union pledges cooperation to the increasing of departmental efficiency and effectiveness. Any and all rights concerning management and direction of the Fire Department and the Fire Fighters shall be exclusively the right of the City and the Chief of the Fire Department, unless otherwise provided by the terms of this agreement as permitted by law.

"The powers, rights, and/or authority claimed by the City are not to be exercised in a manner that will undermine the Union or as an attempt to evade the provisions of this Agreement, or to violate the spirit, intent, or purpose of this Agreement."

5. That Article VII of said agreement, entitled "Overtime", provides:

> "Overtime is defined as time worked before or after a regularly scheduled work shift. Overtime will be paid for all hours worked over 56 hours per week. All firefighters who are requested to attend school on off-duty time will be compensated at the overtime rate for actual hours spent in session.
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> "Compensation for call in time will be as follows: Two hours at the Firefighters' regular hourly rate, plus time and one-half for all time worked, with a one hour mimimum. [sic]
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> "Any time a Firefighter is held over following his regularly scheduled shift, he shall be compensated at time and one-half at his regular hourly rate of pay for all time worked."

6. That Article IX of said contract, entitled "Call Days", provides:

> "There will be one Firefighter on call the twenty-four (24) hour period following his normal twenty-four hour tour of duty. Compensation for such Call Period shall be $20.00 to be paid on the first regular monthly pay period, if possible. Call periods will be divided equally from the rank of Lieutenant down through the Fire Fighters. 'Call man may exchange call days with any off-duty Firefighter. No time and one-half shall be paid should the occasion arise as a result of the trade.'"

7. That Article XX of said contract provides for a grievance arbitration procedure which culminates in final and binding arbitration.

8. That the Municipal Employer maintains two fire stations, which are designated as stations number 1 and number 2; that nine firefighters constitute a full time employe complement on any one shift; that six firefighters are normally assigned to station number 1, and three firefighters are assigned to station number 2.

9. That for a number of years, the parties have agreed that at least one firefighter would be on call for each shift; that during 1975, firefighters on call received a flat $20 per shift; and that whenever firefighters on call were called in during emergencies, they were paid for several hours work, in addition to their daily $20 rate.

10. That the Fire Chief on March 2 issued a directive regarding the allocation of manpower whenever station number 2 was on call; that said directive provided that whenever nine firefighters were on duty and whenever station number 2 went on call, that one firefighter from station number 1 would then be transferred to station number 2 during the time that the firefighters in the latter station were on call; and that prior thereto, it appears that the call man had been called in to report to station number 2 whenever its firefighters were on call.

11. That the Association immediately thereafter filed a grievance over the March 2 order; that the parties were unable to resolve that grievance; that the Association has never requested that that matter be submitted to arbitration; and that the parties have not submitted that matter to arbitration as of the instant hearing.

12. That the Association on March 23 filed the instant petition for a declaratory ruling requesting the Commission to determine whether the Municipal Employer's March 2 directive regarding the allocation of manpower constituted a change in working conditions and, if so, whether it constituted a negotiable matter.

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

CONCLUSION OF LAW

That the facts which form the gravamen of the instant dispute involve the interpretation of the collective bargaining agreement between the parties and, accordingly, are not proper subjects for the issuance of a Declaratory Ruling, pursuant to section 111.70(4)(b) of MERA.

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

ORDER

That petition for declaratory ruling herein be, and the same hereby is, denied.

Given under our hands and seal at the City of Madison, Wisconsin this 1st day of November, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian, Commissioner

Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING ORDER DENYING REQUEST FOR DECLARATORY RULING

The association primarily argues that the fire chief's March 2 directive which related to the allocation of manpower constituted a change in working conditions and that, as a result, the municipal employer was obligated to bargain about that matter. The association contends that for a number of years the call man was always called in whenever station number 2 was on call, and that the March 2 directive, which required that a firefighter from station number 1 be sent to station number 2 whenever the latter was on call, constitutes a change in this past practice because the call man will no longer be called in during those circumstances.

In considering the association's claim, the commission notes that the applicable collective bargaining contract contains provisions pertaining to "Reservations of Rights", "Overtime", and "Call Days". A review of those provisions indicates that they spell out the respective rights and obligations of the municipal employer and the association. Since the contract also provides for final and binding arbitration, the parties can seek an ajudication of the issues presented herein in an arbitration forum.

In such circumstances, where the parties have already bargained on the subject involved and the real issue presented turns on the interpretation of the collective bargaining agreement reached as a result of that bargaining, and where the parties are able to resolve their differences through the contractually established arbitration procedure, it would be inappropriate for the commission to rule on such an issue in a declaratory ruling proceeding. The commission has said in a case involving the instant municipal employer: 2/

> "* * * The parties should utilize that [grievance-arbitration] procedure in order to establish the meaning of their collective bargaining agreement as to the issue involved herein."

Section 111.70(4)(b), MERA, provides:

> "Whenever a dispute arises between a municipal employer and a union of its employes concerning the duty to bargain on any subject, the dispute shall be resolved by the commission on petition for a declaratory ruling. * * *"

The purpose of the declaratory ruling procedure in sec. 111.70(4)(b) is to have the commission decide what is bargainable. Here, however, the instant dispute does not concern what is bargainable, but rather what is meant by the bargain that was reached. To apply subsection (4)(b) in these circumstances would tend to defeat the legislative objective that parties resolve their disputes through their own collectively bargained dispute resolution machinery. A declaratory ruling would only obfuscate the contractual nature of the dispute. A ruling that a subject is bargainable is not the equivalent of a ruling that it was not bargained or a ruling as to what the bargain means. Further, the use of subsection (4)(b) here would tend to defeat the legislative intent that the parties abide by their contracts. For example, rather than arbitrate a dispute lacking in merit under the contract, a party might

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2/ City of Wisconsin Rapids (Police Department) (1381-A) 3/76.

shop for the declaratory ruling forum for the very purposes of obfuscating the contractual nature of the dispute and of trying to win what it contracted away. Similarly, the availability of a declaratory ruling in these circumstances would tend to induce parties not to bargain in good faith: concessions to get favorable contract terms would be made, but those concessions could then be sought back through a declaratory ruling.

In the interest of clarity, the instant attempt to invoke the commission's process should be contrasted with two other similar but distinct types of cases. First, if the collective bargaining agreement here had not provided for final and binding arbitration, the association could have filed a complaint requesting the commission to determine the contract issue on the merits. In that event, the commission would be the substitute for the arbitrator in interpreting the contract's meaning. Second, if the association had filed a prohibited practice complaint with the commission alleging that the employer breached its duty to bargain, the commission would consider the effect of the contractual language and any arbitration award on that duty. Although the commission would not be bound by an arbitrator's interpretation which tended to frustrate the purposes or policies of MERA in such a proceeding, it would in appropriate circumstances defer to such an award.

Accordingly, and for the reasons noted above, the Commission concludes that the issues herein should not be resolved in a declaratory ruling proceeding and that, as a result, the Association's petition is hereby denied.

Dated at Madison, Wisconsin this 1st day of November, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Herman Torosian, Commissioner

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Charles D. Hoornstra, Commissioner