

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

SHEBOYGAN COUNTY LAW ENFORCEMENT :
EMPLOYEES, LOCAL 2481, AFSCME, AFL-CIO :

For Final and Binding Arbitration :
Involving Law Enforcement Personnel :
in the Employ of :

SHEBOYGAN COUNTY :
- - - - -

Case XXVI
No. 20511 MIA-249
Decision No. 14859

FINDINGS OF FACT, CONCLUSION OF LAW,
CERTIFICATION OF RESULTS OF INVESTIGATION AND
ORDER REQUIRING ARBITRATION

Sheboygan County Law Enforcement Employees, Local 2481, AFSCME, AFL-CIO, having on May 24, 1976, filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission initiate compulsory final and binding arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act, for the purpose of resolving an impasse arising in collective bargaining between the Petitioner and Sheboygan County on matters affecting the wages, hours and conditions of employment of law enforcement personnel in the employ of said Municipal Employer; and informal investigation having been conducted on July 22, 1976, by Dennis P. McGilligan, a member of the Commission's staff; and the Commission being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law, Certification of Results of Investigation and Order Requiring Arbitration.

FINDINGS OF FACT

1. That Sheboygan County Law Enforcement Employees, Local 2481, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization having its offices at 811 Huron Street, Manitowoc, Wisconsin 54220.
2. That Sheboygan County, hereinafter referred to as the Municipal Employer, has its offices at P.O. Box 128, Sheboygan, Wisconsin.
3. That, at all times material herein, the Union has been, and is, the certified exclusive collective bargaining representative of the law enforcement personnel in the employ of the Municipal Employer.
4. That, on May 24, 1976, the Petitioner filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to initiate final and binding arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act, with regard to an impasse existing between the parties with respect to wages, hours and conditions of employment of law enforcement personnel for the years 1976 and 1977; that informal investigation having been conducted on July 22, 1976 by Dennis P. McGilligan, a member of the Commission's staff; and that said Investigator having advised the Commission on August 3, 1976 that the parties are at impasse on the existing issues as outlined in their final offers transmitted along with said Advice and that he has closed the investigation on that basis.

5. That the parties have not established mutually agreed upon procedures for the final resolution of disputes arising in collective bargaining, and further, that the parties have not mutually agreed that the arbitration should not be limited to the last and final offers of each of the parties.

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

CONCLUSION OF LAW

That an impasse, within the meaning of Section 111.77(3) of the Municipal Employment Relations Act, exists between Sheboygan County Law Enforcement Employees, Local 2481, AFSCME, AFL-CIO and Sheboygan County with respect to negotiations leading toward a collective bargaining agreement for the year 1976 and 1977 covering the wages, hours and conditions of employment for law enforcement personnel employed by Sheboygan County.

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

CERTIFICATION

IT IS HEREBY CERTIFIED that the conditions precedent to the initiation of compulsory final and binding arbitration, as required by Section 111.77 of the Municipal Employment Relations Act, with respect to negotiations between Sheboygan County Law Enforcement Employees, Local 2481, AFSCME, AFL-CIO and Sheboygan County on issues of wages, hours and conditions of employment of law enforcement personnel employed by Sheboygan County have been met.

NOW, THEREFORE, it is

ORDERED

1. That compulsory final and binding final offer arbitration be, and the same hereby is, initiated for the purpose of issuing a final and binding award to resolve the impasse existing between Sheboygan County Law Enforcement Employees, Local 2481, AFSCME, AFL-CIO and Sheboygan County.

2. That the parties select an arbitrator within ten (10) days after the issuance of this Order from the panel of arbitrators submitted to the parties in the accompanying letter of transmittal, by alternately striking four (4) of the members from said panel for the selection of the neutral arbitrator; and thereupon the parties, or either of them, shall notify the Commission, in writing, of the name of the neutral arbitrator, and the Commission shall then issue an Order appointing said neutral arbitrator.

Given under our hands and seal at the
City of Madison, Wisconsin this 24th
day of August, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Gerran Torosian
Gerran Torosian, Commissioner

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW, CERTIFICATION OF RESULTS
OF INVESTIGATION AND ORDER REQUIRING ARBITRATION

At the informal investigation conducted on July 22, 1976, and by its Supplementary Response to Advice to Commission dated August 9, 1976, the Municipal Employer argues that the Commission's investigator, pursuant to the arbitration provision of Section 111.77, must advise the Commission by supplying "advice to the parties of each issue which is known to be in dispute" and that such advice shall "also set forth the final offer of each party." The Municipal Employer contends that a "final offer" submitted to the Arbitrator under Section 111.77(4) (b) must include every provision which would otherwise be incorporated into a collective bargaining agreement in order for the award to be meaningful and valid, and that its offer, unlike the Union's offer, is in compliance with the Statute. The Municipal Employer maintains that its "final offer" consists of 24 single-spaced typewritten pages together with an index which was submitted to the investigator on July 22, 1976, and takes the position that said document must be included in the investigator's Advice To The Commission. Therefore, the Municipal Employer concludes, the investigator's Advice To The Commission is in error because it includes only the Municipal Employer's final offer with respect to items in dispute and excludes the remaining provisions, over which there is no dispute, to be included in the collective bargaining agreement.

The Municipal Employer incorrectly construes "final offer" in the second sentence of Sec. 111.77(4) (b) as referring to items over which there is no dispute as well as to items over which there is a dispute. The Commission must reject this construction for two reasons:

First, the legislature sought to provide a method for resolving disputes. This overriding intent is evidenced by the following underscored words within the subdivision:

"* * * The commission shall appoint an investigator to determine the nature of the impasse. The commission's investigator shall advise the commission in writing, transmitting copies of such advice to the parties of each issue which is known to be in dispute. Such advice shall also set forth the final offer of each party as it is known to the investigator Neither party may amend its final offer thereafter, except with the written agreement of the other party. The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification." (Emphasis added.)

To construe "final offer" as relating to undisputed items severs those words from their context with disputed items. Furthermore, it strains the natural meaning of "offer", as customarily used in labor relations, to refer to an accepted offer.

Second, the Municipal Employer's construction is contrary to the past practical application of sec. 111.77(4) (b) and its predecessors. Prior awards issued thereunder indicate that it is common practice for the parties to refer only to those issues which they are unable to resolve in their negotiations. 1/ None of the awards issued by

1/ City of Stevens Point (12639-A and 12652-B) 9/74.

arbitrators indicates that either party submitted its "final offer" in the form of a completed collective bargaining agreement, as the Municipal Employer has done in this matter. 2/ However, there is implicit or explicit recognition in all of said cases that the issue or issues determined in the award constitute only a portion of the provisions which ultimately will be incorporated into the collective bargaining agreement after the award is issued, and consideration is often given by the arbitrator to other provisions already in the agreement and other concessions the parties have made in choosing between their "final offers."

There is no evidence that the practice under the statute was intended to be changed by the amendment which became effective on May 21, 1976. The Commission is convinced that to read such a change into the amendment would require the parties to submit offers incorporating matters previously agreed upon and also would burden the arbitrator with matters not in issue.

Based on the above, the Commission finds that Appendix "A" Final Offer of Municipal Employer, as attached to the Advice to Commission, dated August 3, 1976, does accurately set forth the final offer of the Municipal Employer as to the matters in dispute between the parties with respect to wages, hours and conditions of employment of law enforcement personnel for the years 1976 and 1977.

Dated at Madison, Wisconsin this 24th day of August, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner