

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
WILLIAM STAMM, CHIEF ENGINEER OF THE :
MILWAUKEE FIRE DEPARTMENT : Case CLXIV
Requesting a Declaratory Ruling : No. 20448 DR(M)-71
Pursuant to Section 111.70(4)(b), : Decision No. 15131
Wisconsin Statutes, Involving a :
Dispute between Said Petitioner and :
MILWAUKEE PROFESSIONAL FIRE FIGHTERS' :
ASSOCIATION, LOCAL 215, IAFF :

Appearances:

Mr. James B. Brennan, City Attorney of Milwaukee, by Mr. Thomas E. Hayes, Assistant City Attorney, appearing for the Petitioner. Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., appearing for Milwaukee Professional Fire Fighters' Association, Local 215, IAFF.

ORDER GRANTING MOTION TO DISMISS

William Stamm, Chief Engineer of the Milwaukee Fire Department, hereinafter referred to as the Petitioner, having on May 5, 1976, filed a petition with the Wisconsin Employment Relations Commission requesting a declaratory ruling with respect to an alleged dispute which has arisen between the Petitioner and the Milwaukee Professional Fire Fighters' Association, Local 215, IAFF, hereinafter referred to as Local 215, over whether paid release time for attending union meetings is an appropriate subject for collective bargaining; and on May 14, 1976, the Commission having set hearing in the matter for June 3, 1976, at Milwaukee, Wisconsin; and, pursuant to the request of counsel for the parties, the Commission on May 21, 1976, issued a notice indefinitely postponing hearing in the matter; and thereafter, and on August 2, 1976, hearing having been re-scheduled for September 16, 1976, and that on September 16, 1976 counsel for Local 215 having filed a motion requesting the Commission to dismiss the petition filed herein, contending that the Petitioner is not a municipal employer within the meaning of the Municipal Employment Relations Act, and further, that the Petitioner failed to allege the existence of a dispute between the City of Milwaukee and Local 215 concerning the duty to bargain on any subject, or in the alternative, that the Petitioner failed to join the City of Milwaukee as a proper party; and counsel having agreed to adjourn the hearing and further having agreed to submit briefs on the issues raised in the petition and the motion to dismiss the petition, and such briefs having been received by the Commission; and the Commission having reviewed said briefs, and being fully advised in the premises makes and issues the following

ORDER

IT IS HEREBY ORDERED that the motion of Milwaukee Professional Fire Fighters' Association, Local 215, IAFF, to dismiss the petition

for declaratory ruling filed herein be, and the same hereby is, granted, and, therefore, the petition is hereby dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 22nd day of December, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO DISMISS

The Petitioner, as Chief Engineer of the Milwaukee Fire Department, holds the top supervisory and managerial position in the Fire Department of the City of Milwaukee. Local 215 is the bargaining representative of approximately 1,000 firefighter employes employed in said Fire Department. At all times material herein there has existed a collective bargaining agreement between the City of Milwaukee, hereinafter referred to as the City, and Local 215, effective from March 1, 1975, through December 31, 1976. Said agreement contains among its provisions a provision entitled "Bank of Hours for Union Activity" as follows:

- "1. The Association shall advise City of the names of its representatives. One or more representatives from the Association shall be paid regular base salary up to a combined maximum of 480 hours during the term of this Agreement for the time spent by any Association representative engaged in the processing of grievances, any conference called by the City, any business pursued by the Association at the City's request during regular working hours, and any time spent by officers of the Association at Association meetings and executive board meetings which occur during their regular working hours, and any time spent by executive board members of the Association at executive board meetings of the Association, during their regular working hours; except no payment will be made for such time outside the representatives' normal workdays. Reasonable travel time will be allowed."

Said facts and the contractual provision involved were set forth in the petition filed by the Petitioner. In his petition, the Petitioner further alleged as follows:

- "4. Pursuant to the terms of the aforementioned contract, Local 215 on numerous occasions has sought to obtain from the petitioner the release of five members of the executive board of Local 215 from duty with pay in order to attend meetings of Local 215's executive board. Local 215 has also sought to obtain from the petitioner the release of officers of Local 215 from duty with pay in order to attend Local 215 association and executive board meetings. The petitioner is informed and verily believes that the meetings are being held for the sole purpose of conducting union business.

- "5. A dispute has arisen between the petitioner and Local 215 over whether paid release time for attending union meetings is an appropriate subject for collective bargaining and, therefore, inclusion in the contract between Local 215 and the City of Milwaukee.

- "6. The position of the petitioner is that Section 111.70 (3)(a)2., Wis. Stats., precludes the petitioner from releasing members of Local 215 from duty with pay to attend union meetings because such activity constitutes a subsidy to the union. The petitioner relies upon the legal opinion of the City Attorney dated July 1, 1975, a copy of which is hereto annexed and incorporated herein as though fully set forth at length.

"WHEREFORE, your petitioner requests a declaratory ruling that paid release time for members of Local 215 for purposes of union business is not an appropriate subject of bargaining and that petitioner is not allowed to abide by that provision of the labor contract between the City of Milwaukee and Local 215 authorizing paid release time for such purpose."

Local 215 filed a motion with the Commission requesting the Commission to dismiss the petition for declaratory ruling on the grounds stated in the preface to the Order issued herein.

Both counsel waived hearing in the matter and agreed that they would file briefs in support of their respective positions. At this stage of the proceeding there is no dispute as to the facts, and the Commission issues its Order after having reviewed the briefs of counsel. It should be noted that counsel for the Petitioner is an assistant city attorney of the City.

POSITION OF LOCAL 215:

Local 215 argues that Section 111.70(4)(b) of the Municipal Employment Relations Act, hereinafter referred to as MERA, which provides a mechanism for resolving disputes as to whether certain matters are subject to the statutory duty to bargain collectively, is available only to parties subject to the statutory duty to bargain with respect to wages, hours and working conditions of the employes involved herein, namely, the City and Local 215, and not the Petitioner. Local 215 further contends that, while Section 111.70(1) of MERA, which defines the term "municipal employer", actually contains both a broad (political subdivisions and certain individuals) and a narrow (political subdivisions only) definition of the term, Section 111.70(4)(b) sets forth the term "municipal employer" in conjunction with the neuter pronoun "its", and, therefore, it must be concluded that the legislature intended to limit the applicability of the latter section to the narrow definition of the term "municipal employer", i.e., "any city, . . . or any other political subdivision of the state which engages the services of an employe . . ." Local 215 indicates that Commission Rules ERB 18.02 and 18.05 are consistent with that interpretation.

Local 215 finally contends that the Petitioner, as an agent of the City, is bound by the terms of the collective bargaining agreement existing between the City and Local 215 and that, therefore, the Petitioner lacks standing under Section 111.70(4)(b) to seek a declaratory ruling challenging the validity of the provision in the existing collective bargaining agreement.

POSITION OF THE PETITIONER:

The Petitioner argues that Section 111.70(4)(b) is intended to enable one who would be subject to a prohibited practice complaint to seek a declaratory ruling prior to engaging in conduct which might be found to be a prohibited practice in order to avoid the commission of a prohibited practice. The Petitioner contends that he is faced with a dilemma, in that should he grant paid release time he would be contributing to the financial support of Local 215, and, therefore, would commit a prohibited practice within the meaning of Section 111.70(3)(a)2 of MERA; and on the other hand, should he refuse to grant paid release time, he could be found in violation of the collective bargaining agreement, and, therefore, would commit a prohibited practice within the meaning of Section 111.70(3)(a)5 of MERA.

The Petitioner contends that he falls within the definition of the term "municipal employer", since he has the authority to act on behalf of the City, not only within the meaning of Section 111.70(1)(a), but also that he has such authority as prescribed in Section 22.12 of the Wisconsin Statutes, which grants the Petitioner the power to regulate the Fire Department and to prescribe rules for the governance of the employes thereof. The Petitioner concludes that it would not be consistent for the Commission to conclude that he is subject to its jurisdiction when he is a respondent in a prohibited practice case but that he does not have standing to seek the declaratory ruling herein.

DISCUSSION:

While in the petition the Petitioner contends that "paid release time for members of Local 215 for purposes of union business is not an appropriate subject of bargaining", the paid release time provision has already been negotiated by the City of Milwaukee and Local 215 and incorporated in their collective bargaining agreement. The Petitioner, in effect, seeks a determination as to the validity of such provision rather than a determination as to the duty to bargain thereon. Therefore, even assuming that the Petitioner had proper standing to file the instant petition, the issue involved does not fall within the intent of Section 111.70(4)(b) of MERA.

We conclude that the Petitioner has no standing to proceed under Section 111.70(4)(b) of MERA since the expression "municipal employer" within the meaning of that subsection refers to an entity with the power to bargain collectively and negotiate an agreement. Petitioner has failed to allege or establish that the City of Milwaukee has empowered him to reach such an agreement.

For the above reasons we have granted Local 215's motion and dismissed the petition herein.

Dated at Madison, Wisconsin this 22nd day of December, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

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Charles D. Hoornstra, Commissioner

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