

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of : Case VI
INTERNATIONAL ASSOCIATION OF : No. 21123 MIA-281
PROFESSIONAL FIRE FIGHTERS, LOCAL 847, : Decision No. 15431
MERRILL FIRE FIGHTERS :
To Initiate Final and Binding :
Arbitration Between Said Petitioner and :
CITY OF MERRILL :

FINDINGS OF FACT, CONCLUSION OF LAW AND INTERIM ORDER

International Association of Professional Fire Fighters, Local 847, Merrill Fire Fighters having, on December 17, 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 said union and the City of Merrill on matters affecting the wages, hours and conditions of employment of fire fighter personnel in the employ of said municipal employer; and an informal investigation having been conducted on January 7, 1977, by Sherwood Malamud, a member of the commission's staff, during the course of which the parties having agreed to all but one issue between them; and further during the course of the investigation, the investigator having found that the parties could not agree as to the bargainability of an issue over work schedule, and consequently no bargaining having taken place over said issue; and the parties having jointly requested the commission to determine whether the union's proposed work schedule is a mandatory subject of bargaining; and the parties having filed briefs by February 21, 1977; and the commission being fully advised in the premises makes and files the following Findings of Fact, Conclusion of Law and Interim Order.

FINDINGS OF FACT

1. That the International Association of Professional Fire Fighters, Local 847, Merrill Fire Fighters, hereinafter the union, is a labor organization with its offices located at 701 1st Street, Merrill, Wisconsin.
2. That the City of Merrill, hereinafter the employer, is a municipal employer with its principal offices located at City Hall, Merrill, Wisconsin.
3. That at all times material herein, the union has been, and is, the recognized, exclusive bargaining representative of non-supervisory fire fighter personnel in the employ of the employer.
4. That the union and employer were parties to a collective bargaining agreement for a period of one year from January 1, 1976, through December 31, 1976 which contains the following provisions material hereto:

**"Article 3
Reservation of Rights**

"The Union recognizes the Employers [sic] right to management reserved by and vested in the Chief and the Police and Fire Commission and the Common Council, and modified only to the extent of the terms of this agreement.

. . .

"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 Chief of the Fire Department shall determine work schedules consistant [sic] with this agreement and establish methods and processes by which such work is performed. The City and Chief of the Fire Department shall have the right to transfer employees within the Fire Department in a manner most advantageous to the City."

5. That during the 1976 calendar year fire fighters were scheduled for 24 hours on duty and 48 hours off duty.

6. That the parties have been engaged in negotiations for a successor to their 1976 agreement, and in regard thereto the union submitted the following proposal concerning work schedules, as follows:

**"Work one day (or 24 hours)
No work one day (or 24 hours)
Work one day (or 24 hours)
No work one day (or 24 hours)
Work one day (or 24 hours)
No work four days (or 96 hours)"**

7. That throughout negotiations the employer has maintained that the union's work schedule for fire fighters is not a bargainable issue.

8. That during the course of the informal investigation conducted on January 7, 1977, the parties stipulated that the commission should determine the bargainability of the work schedule issue.

Based upon the above and foregoing Findings of Fact, the commission issues the following

CONCLUSION OF LAW

That the proposed work schedule described above primarily relates to the hours and conditions of employment of fire fighting personnel and therefore is a mandatory subject for collective bargaining over which an employer has a duty to bargain collectively, as that term is defined by section 111.70(1)(d) and section 111.70(3)(a)4 of the Municipal Employment Relations Act.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the commission issues the following

INTERIM ORDER

That processing of the instant petition be held in abeyance until such time as the parties reach an impasse with respect to work schedules;

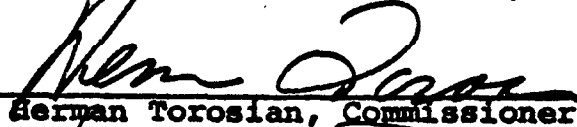
however, should the parties reach an accord on said matter, the commission, upon so being advised, will dismiss the petition.

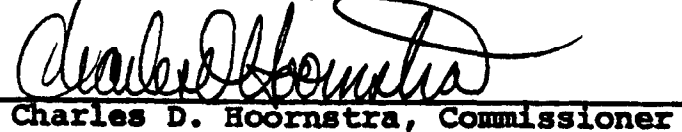
Given under our hands and seal at the
City of Madison, Wisconsin this 13th
day of April, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND INTERIM ORDER

The union filed the instant petition for final and binding arbitration, pursuant to sec. 111.77 Stats., on December 17, 1976. On January 7, 1977, the commission's agent conducted an informal investigation on the petition in accordance with statutory procedures and during the course of said informal investigation, the parties resolved all outstanding issues except the one concerning the union's proposed work schedule. The employer maintains that the subject of work schedules is not bargainable, and the union persists in its request that the employer change the existing work schedule in accordance with its proposal.

At the conclusion of the informal investigation the parties submitted by stipulation the bargainability issue over work schedule to the commission for resolution.

Because the instant dispute arises out of a petition filed pursuant to sec. 111.77, Stats., it is appropriate to treat the issue presented as arising under sec. 111.77, Stats., and ch. ERB 30, Wisconsin Administrative Code, rather than sec. 111.70(4)(b), Stats., and ch. ERB 18, Wisconsin Administrative code. The employer has maintained throughout the negotiations and during the investigation of the petition herein, that the union's proposed work schedule is not a bargainable matter and has refused to bargain concerning same. It is, therefore, unclear whether the parties have reached an impasse in their negotiations within the contemplation of sec. 111.77(3).

If the proposed work schedule is found to be a permissive subject over which the employer has no duty to bargain, it is clear that the parties have not reached an impasse over wages, hours and working conditions and the provisions of sec. 111.77 would not apply.

If, on the other hand, the union's work schedule is found to be a mandatory subject for collective bargaining it is possible that the parties may reach agreement on that subject following negotiations thereon.

The union proposes to change the work schedule from twenty-four hours on duty and forty-eight hours off duty to a rotation of:

24 hours on duty
24 hours off duty
24 hours on duty
24 hours off duty
24 hours on duty
96 hours off duty

The employer maintains that the work schedule is not a bargainable issue for the following reasons:

1. Under the 1976 agreement, work schedule was one of the areas specifically left to management's discretion.
2. Under sec. 62.11(5), the City is cloaked with the power to act on matters affecting the health, welfare and safety of its citizens and this right may be limited only by specific statutory language.
3. Other jurisdictions permit municipal employers to control conditions of employment of municipal employees without bargaining over said conditions.

In order to evaluate the employer's arguments, it is necessary to analyze the nature of the union's proposal. The employer concedes that it would have an obligation to bargain over union proposals which would seek to increase or decrease the total number of hours worked. The proposal does not seek to increase or decrease the total number of hours worked by fire fighters in a year, but rather it seeks to regulate the number and spacing of off days in a nine day rotation.

The Municipal Employment Relations Act at sec. 111.70(1)(d) defines collective bargaining as:

"... the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employees, to meet and confer at reasonable times, in good faith, with respect to wages, hours and conditions of employment with the intention of reaching an agreement, or to resolve questions arising under such an agreement. The duty to bargain, however, does not compel either party to agree to a proposal or require the making of a concession. Collective bargaining includes the reduction of any agreement reached to a written and signed document. The employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the employees. In creating this subchapter the legislature recognizes that the public employer must exercise its powers and responsibilities to act for the government and good order of the municipality, its commercial benefit and the health, safety and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to public employees by the constitutions of this state and the United States and by this subchapter."

In a declaratory ruling, City of Beloit, a Municipal Corporation, by the Beloit City School Board, its Agent, (11831-C) 9/74, the commission construed the above statute to require mandatory bargaining as to

"(1) matters which are primarily related to 'wages, hours and conditions of employment' and (2) the impact of the 'establishment of educational policy' affecting the 'wages, hours and conditions of employment.'"

The Wisconsin Supreme Court agreed with said construction. 1/

In applying the test expressed in the Beloit case, i.e., whether the disputed subject primarily relates to wages, hours and conditions of employment, it is apparent that the demand to bargain over the spacing of days off and days on duty, directly and intimately affects the hours and conditions of employment of fire fighters. The commission has previously so held. 2/

In reaching this conclusion the commission has carefully considered the employer's arguments and found them lacking in merit.

the right to establish work schedules in the 1976 agreement does not mean that the union thereby forever waived its right to attempt to change that provision of the agreement through collective bargaining.

Secondly, although the employer is cloaked with the statutory authority to establish policies concerning the health, safety and welfare of its citizens, it is likewise under a statutory obligation to bargain with the union before it exercises that authority where such policies directly and intimately affect wages, hours and working conditions. The employer may attempt through bargaining and arbitration, if bargaining fails, to retain the unilateral right to establish work schedules.

Finally, the jurisdictions cited in the employer's brief which permit the employer to unilaterally establish conditions of employment, do so under statutes wholly different from the Municipal Employment Relations Act, and therefore are not germane to the Wisconsin experience. Furthermore, the employer's reliance on Huhnke vs. Wischer, 271 Wis. 66 (1955), where the Court held that a City could prohibit firemen from engaging in outside employment, is misplaced, for Wischer was decided prior to the enactment of the Municipal Employment Relations Act.

For the above reasons, the commission concludes that the issue of work schedules is a mandatory subject of bargaining. Therefore, the commission has issued an Interim Order to permit the parties to engage in bargaining over the work schedule issue. However, if an impasse should develop and the commission is so advised by its staff investigator of such an impasse, the commission will issue a final order in this matter directing the parties to arbitration.

Dated at Madison, Wisconsin this 13th day of April, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner