#### STATE OF WISCONSIN

# BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Stipulation To

APPLETON WATER COMMISSION

and

Case XIV
No. 22524 MED/ARB-22
Decision No. 16125

APPLETON CITY EMPLOYEES UNION (WATER WORKS DIVISION), LOCAL 73, WCCME, AFSCME, AFL-CIO

# FINDINGS OF FACT, CONCLUSIONS OF LAW, CERTIFICATION OF RESULTS OF INVESTIGATION AND ORDER REQUIRING MEDIATION-ARBITRATION

Appleton City Employees Union (Water Works Division), Local 73, WCCME, AFSCME, AFL-CIO having on January 24, 1978 filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission initiate Mediation-Arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act, for the purpose of resolving an impasse arising in collective bargaining between the Appleton Water Commission and Appleton City Employees Union (Water Works Division), Local 73, WCCME, AFSCME, AFL-CIO on matters affecting the wages, hours and conditions of employment of certain employes, represented by said Union, who are in the employ of said Municipal Employer; and mediation having been conducted on January 18, 1978, by Sherwood Malamud, a member of the Commission's staff; and the parties on January 18, 1978 at said mediation session having filed a written waiver of informal investigation in the event a petition for Mediation-Arbitration were filed and having also filed their final offers as well as a stipulation on matters agreed upon at said mediation session; and the Commission being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law, Certification of Results of Investigation and Order Requiring Mediation-Arbitration.

### FINDINGS OF FACT

- 1. That the Appleton City Employees Union (Water Words Division), Local 73, WCCME, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization maintaining its offices at 1036 Mt. Vernon, Oshkosh, Wisconsin 54901.
- 2. That the Appleton Water Commission, hereinafter referred to as the Municipal Employer, maintains its offices at 126 North Walnut Street, Appleton, Wisconsin 54911.
- 3. That, at all times material herein, the Union has been, and is, the certified exclusive collective bargaining representative of employes in the employ of the Municipal Employer in the collective bargaining unit consisting of all employes of the Appleton Water Commission employed in its water filteration and water treatment plant, excluding plant foremen and superintendent; and that the Union and the Municipal Employer have been parties to a collective bargaining agreement covering the wages, hours and conditions of employment of said employes, which by its terms, was to expire on December 31, 1977.

- That, on October 26, 1977 the Union served a notice on the Municipal Employer to open negotiations with respect to the terms and conditions of employment to be included in a collective bargaining agreement to succeed the agreement which was to expire on December 31, 1977; that on November 30, 1977 the parties exchanged their initial proposals; that prior to January 18, 1977 the parties met in negotiations on three separate occasions in efforts to reach an agreement on a new collective bargaining agreement; that on December 19, 1977 the parties forwarded a joint request to the Wisconsin Employment Relations Commission requesting the Commission to appoint a mediator in efforts to assist the parties in reaching such an accord; that Sherwood Malamud, a member of the Commission's staff was appointed as the mediator, and that on January 18, 1978 said mediator attempted to mediate the dispute; that the parties were unable to reach an accord during the course of mediation and on the same day the parties exchanged their final offers and stipulated to the matters agreed upon between them and submitted said final offers and stipulation to the mediator; that on the basis of the submission of final offers and stipulation of items agreed upon, as well as the parties written waiver of informal investigation, the mediator on February 3, 1978 served notice on the parties, in writing, that the investigation in the matter was closed; and thereafter said mediator advised the Commission that the parties remain at impasse.
- 5. That the parties have not established mutually agreed upon procedures for the final resolution of disputes arising in collective bargaining.

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

### CONCLUSIONS OF LAW

- l. That an impasse, within the meaning of Section 111.70(4)(cm)6, Wisconsin Statutes, exists between the Appleton City Employees Union (Water Works Division), Local 73, WCCME, AFSCME, AFL-CIO and the Appleton Water Commission with respect to negotiations leading toward a new collective bargaining agreement covering the wages, hours and conditions of employment affecting employes in the bargaining unit set forth in paragraph 3 of the Findings of Fact.
- 2. That the Appleton Water Commission and the Appleton City Employees Union (Water Works Division), Local 73, WCCME, AFSCME, AFL-CIO have substantially complied with the procedures set forth in Section 111.70(4)(cm), Wisconsin Statutes, required prior to the initiation of Mediation-Arbitration.

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

## CERTIFICATION

IT IS HEREBY CERTIFIED that the conditions precedent to the initiation of Mediation-Arbitration, as required by Section 111.70(4)(cm)6, Wisconsin Statutes, with respect to negotiations between the Appleton Water Commission and the Appleton City Employees Union (Water Works Division), Local 73, WCCME, AFSCME, AFL-CIO covering wages, hours and conditions of employment for a new collective bargaining agreement affecting employes in the bargaining unit in paragraph 3 of the Findings of Fact have been met.

NOW, THEREFORE, IT IS

#### ORDERED

- 1. That Mediation-Arbitration be, and the same hereby is, initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the Appleton Water Commission and the Appleton City Employees Union (Water Words Division), Local 73, WCCME, AFSCME, AFL-CIO involving the employes of said Municipal Employer employed in the bargaining unit described in paragraph 3 of the Findings of Fact.
- 2. That the parties select a Mediator-Arbitrator within ten (10) days after the issuance of this Order from the panel of Mediator-Arbitrators submitted to the parties in the accompanying letter of transmittal, by alternatively striking four (4) of the members from said panel for the selection of the neutral Mediator-Arbitrator; and thereupon the parties, or either of them, shall notify the Commission, in writing, of the name of the neutral Mediator-Arbitrator, and the Commission shall then issue an Order appointing said neutral Mediator-Arbitrator.

Given under our hands and seal at the City of Madison, Wisconsin this 14th day of February, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Rv

Mopris Slavney, Chairman

Herman Torosian, Commissioner

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

It is to be noted that the Commission in its Conclusion of Law No. 2 has found that the parties have substantially complied with the procedures in Section 111.70(4)(cm) which are required prior to the initiation of Mediation-Arbitration. We reach such conclusion for the reason that the parties commenced their negotiations prior to January 1, 1978, the effective date of the new Mediation-Arbitration law, therefore it was not necessary prior to January 1, 1978 that either party notify the other in writing of an intent to reopen negotiations and further that the parties at the time of the initial meeting were not required to hold public meeting for the purpose of exchanging and explaining their initial proposals.

It should also be noted that the parties reached impasse at the January 18, 1978 mediation session. As a result, the parties exchanged final offers at that time. Furthermore, in anticipation of the Union filing a petition in the matter, both the Municipal Employer and the Union executed a written form waiving investigation when said petition was filed by the Union. The Commission's investigator closed the investigation on February 3, 1978 on the basis of the parties submission of a written stipulation of agreed upon items, their exchange of final offers, filing of a petition for Mediation-Arbitration by the Union, and the waiver by both parties of investigation in the matter.

Dated at Madison, Wisconsin this 14th day of February, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

V

Morris Slavney, Chairman

Herman Torosian, Commissioner