

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Stipulation of
EAU CLAIRE COUNTY and GENERAL
DRIVERS AND HELPERS UNION, LOCAL 662
Involving Certain Employees of
EAU CLAIRE COUNTY

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: Case XXIV
: No. 15666 ME-796
: Decision No. 11030-A
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In the Matter of the Petition of
EAU CLAIRE COUNTY
Requesting a Declaratory Ruling
Pursuant to Section 111.70(4)(b),
Wis. Stats. Involving a Dispute Between
Said Petitioner and
GENERAL DRIVERS AND HELPERS UNION,
LOCAL 662, affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSMEN AND HELPERS OF
AMERICA

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: Case LIII
: No. 22972 DR(M)-90
: Decision No. 16354
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ORDER DENYING MOTION AND ORDER
REOPENING CERTIFICATION PROCEEDING

Eau Claire County having, on April 26, 1978, filed a motion wherein it asks the Commission, inter alia, to determine whether certain positions, namely cooks and cook/matrons, are properly accreted to a certified bargaining unit consisting of non-supervisory deputy sheriffs in the employ of Eau Claire County; and thereafter General Drivers, Local 662, IBTCWA, having filed a motion to dismiss that portion of the petition on the basis that it was inappropriately filed under §111.70(4)(b), Stats.; and the Commission being satisfied that said motion be denied and that said portion of the petition be treated as a petition for unit clarification pursuant to §111.70(4)(d), and that therefore the Commission's proceeding in the above-entitled certification be reopened for that purpose;

NOW, THEREFORE, it is

ORDERED

1. That the motion to dismiss herein be, and the same hereby is, denied; and

2. The Commission's proceeding in Case XXIV, above, is hereby reopened for the purpose of making a determination as to whether the

No. 11030-A
No. 16354

positions of cook and cook/matron should be accreted to the unit certified therein.

Given under our hands and seal at the City of Madison, Wisconsin this 17th day of May, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Marshall L. Gratz
Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION AND
ORDER REOPENING CERTIFICATION PROCEEDING

Eau Claire County (County) and General Drivers and Helpers Union, Local 662, IBTCWA (Union) are parties to a collective bargaining agreement covering both supervisory and non-supervisory employees which provides for a wage reopener. After engaging in negotiations pursuant to that reopener, the Union filed a petition for arbitration pursuant to the provisions of §111.77, Stats. ^{1/} During the investigation of the petition by the Commission's investigator, Donald B. Lee, a dispute arose concerning the proper interpretation of the scope of the reopener clause, i.e., whether the clause covers a longevity proposal made by the Union. The Union contends that it does. The County contends that it does not and therefore objects to the inclusion of the Union's longevity proposal in any final offer made pursuant to §111.77, Stats., on the basis that it is a permissive subject of bargaining.

In addition, a question arose as to whether certain employees, namely, cooks and cook/matrons, who have been voluntarily included in the non-supervisory bargaining unit of deputy sheriffs certified by the Commission, are properly included in that unit, and if not, whether they can be included in the arbitration procedure.

On April 26, 1978 the County filed the instant petition for declaratory ruling pursuant to §111.70(4)(b), Stats., for the purpose of determining whether the Union's longevity proposal fell within the scope of the parties' reopener clause. In the same proceeding, the County asks the Commission to determine whether the cooks and cook/matrons are properly included in the non-supervisory bargaining unit and whether they can be included in the arbitration procedures under §111.77, Stats.

On May 3, 1978 the Union filed a brief wherein it argues that its longevity proposal was within the scope of the wage reopener clause. ^{2/} In addition, at the same time, the Union filed a motion wherein it asks the Commission to dismiss that portion of the County's petition for declaratory ruling wherein it asks for a determination of the appropriateness of the inclusion of the cooks and cook/matrons in the non-supervisory bargaining unit. It is the Union's position that this question is one arising under §111.70(4)(d), Stats., rather than §111.70(4)(b), Stats. The Union asks in the alternative that if this portion of the petition is not dismissed that it be given an opportunity to respond to the merits.

DISCUSSION:

We agree with the Union that a question concerning the appropriate scope of a collective bargaining unit is one arising under §111.70(4)(d), Stats., rather than §111.70(4)(b) Stats. On June 8, 1972, the Commission certified a collective bargaining unit consisting of all full-time deputy sheriffs, excluding the sheriff, supervisory deputy sheriffs and all other employees. According to the County's petition, the cook and cook/matrons in question became employees of the County on January 1, 1977 and the parties thereafter mutually agreed to accrete the positions

^{1/} Case LI, No. 22743, MIA-379.

^{2/} The Union has subsequently advised the Commission by telephone that it has no objection to the Commission proceeding to decide the issue of the scope in the reopener clause on the basis of the record without an evidentiary hearing.

to said unit. However, the Commission has never decided the question of the appropriateness of that accretion nor has it amended its certification to reflect the parties' voluntary inclusion of said personnel in the bargaining unit of non-supervisory law enforcement personnel. Since there exists an issue as to whether the cooks and cook/matrons have such power of arrest as to have been properly accreted to the non-supervisory law enforcement unit, either party could have filed a petition for unit clarification. For this reason, rather than partially dismiss the petition as requested, and require the County to simply refile a separate petition, the Commission will treat the petition as a petition for unit clarification. 3/

Pursuant to its request contained in its motion, the Union is hereby afforded ten days after the receipt of a copy of this order in which to file a response on the merits and ask for an evidentiary hearing if the parties cannot stipulate to the facts as set out in the petition or in a supplementary stipulation.

Dated at Madison, Wisconsin this 9th day of May, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Marshall L. Gratz
Marshall L. Gratz, Commissioner

3/ Greendale Board of Education, (12611) 4/74.