

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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MILWAUKEE POLICE ASSOCIATION,	:	
	:	
Complainant,	:	
	:	
vs.	:	Case CLXXXI
	:	No. 23597 MP-899
	:	Decision No. 16602-B
HAROLD A. BREIER, Chief of Police,	:	
and CITY OF MILWAUKEE,	:	
	:	
Respondents.	:	
	:	

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ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

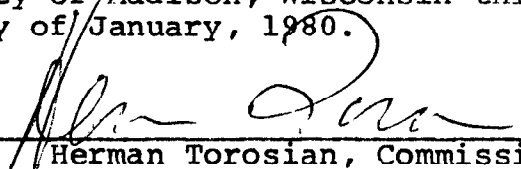
Examiner Amedeo Greco having on May 4, 1979 issued Findings of Fact, Conclusions of Law and Order with accompanying memorandum in the above-captioned matter wherein said Examiner concluded that the above-named employer violated Section 111.70(3)(a)4 of MERA by refusing to bargain with the Association over its assignment to the matrons that they collate time cards and wherein the Examiner ordered that the employer cease and desist from refusing to bargain over such assignments; and thereafter said Respondents having timely filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission review the Examiner's decision; and the Commission having reviewed the record in the matter including the petition for review and the evidence and the arguments presented before the Examiner, and being satisfied that the Examiner's decision be affirmed;

NOW, THEREFORE, it is

ORDERED

That the Examiner's Findings of Fact, Conclusions of Law and Order in the instant matter be, and the same hereby are, affirmed.

Given under our hands and seal at the City of Madison, Wisconsin this 9th day of January, 1980.

By   
Herman Torosian, Commissioner

  
Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING ORDER AFFIRMING EXAMINER'S  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

BACKGROUND:

Prior to the instant complaint, the issue over the assignment of collating time cards was submitted to arbitration for resolution. Arbitrator James Stern found that the assignment of collating time cards was not related or incidental to the regular duties of the police matrons and was outside the scope of the present job description. The Arbitrator concluded that the assignment of said duties was violative of the parties collective bargaining agreement and accordingly ordered the employer to "either amend the job description or desist from ordering matrons to collate time cards". The Respondent, thereafter, brought an action to vacate said Award before Judge Leander J. Foley, Jr., Circuit Court of Milwaukee County. Judge Foley issued a memorandum decision wherein he found that (1) the grievance was arbitrable; (2) the Arbitrator did not exceed his authority when he found that the municipal employer had violated the contract; and (3) the Arbitrator exceeded his authority in ordering "any fixing of responsibility for errors made in 1975-76 as called for by the August 31, 1976 letter of the employer be revoked". The court entered a judgment to that effect on April 11, 1978.

Subsequently, the employer relieved the matrons of the collating assignment. Several months later, the Respondent formally altered the police matrons job description to expressly provide for the collating of time cards and subsequently, started assigning the collating tasks to the matrons without bargaining with the Complainant Association. 1/

The Complainant filed the instant complaint, and amended complaint on October 3, 1978, and December 20, 1978, respectively, wherein it primarily alleged that the City committed prohibited practices in violation of Section 111.70(3)(a)1, 4 and 5 of MERA by (1) refusing to follow the terms of the Arbitration Award issued by Arbitrator James Stern; and (2) by refusing to bargain with Complainant's Association over its assignment of collating time cards to the police matrons.

Respondent filed a motion to dismiss alleging that the Complainant failed to state a cause of action. Respondent alleged that it had complied with the terms of the Arbitration Award and that Chapter 586 of the laws of 1911, now incorporated as Section 62.50 of Wis. Stats. enables the Chief of Police to make the assignment herein.

The Examiner's Decision

The Examiner concluded that the complaint does allege a cause of action; that the collation of time cards by the police matrons does not fairly fall within the usual scope of their duties; that the Respondent did not refuse to follow the terms of Stern's Arbitration Award as alleged by the Association; and that the Respondent committed a prohibited practice in violation of Section 111.70(3)(a)4 of MERA by refusing to bargain with the Association over its assignment to the matrons that they collate the cards.

The Petition for Review

The Respondent in its petition for review alleges that (1) the

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1/ The ordering of the collating task was done unilaterally even though the Association had made a prior request to bargain same.

Examiner's decision is contrary to law; (2) its findings and decision are contrary to law; (3) the decision is arbitrary and capricious in that it infringes upon the statutory management authority of the Chief of Police; and (4) that the findings are totally erroneous in saying that there was a change in working conditions on the job to which the matrons were assigned, when in fact they have done this work for a number of years.

Both the Respondent and the Complainant rely on the same arguments advanced before the Examiner in support of their respective positions.

DISCUSSION:

After having reviewed the record, Respondent's arguments, and the Examiner's decision, we conclude that the record supports the Examiner's Findings of Fact, Conclusions of Law and Order, wherein he concluded that the Respondent by not bargaining with the Association over the assignment of collating time cards violated Section 111.70(3)(a)4 of MERA.

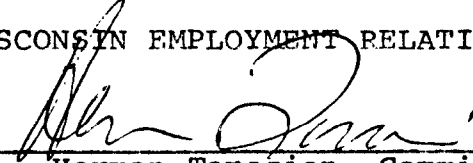
In reaching our conclusion, we are not persuaded by Respondent's arguments that since the matrons have for several years performed the disputed duties, there was no change in the job as found by the Examiner. While it is true that the matrons have performed the work of collating time cards for a number of years, Arbitrator Stern found that the assignment of such duties violated the collective bargaining agreement because they were not included in the job description or related to the duties of police matrons. Therefore, the Respondent was confronted with having to change the matrons job description if it wished to continue to have the matrons perform the collating work.


The Examiner found, and we agree, that since the assignment of collating time cards was outside the scope of the matrons' regular duties, the Respondent had a statutory duty to bargain with the Complainant Association. The fact that matrons had previously performed the disputed duties does not relieve the Respondent of its statutory duty to bargain, since the original assignment of said duties to the matrons was a violation of the collective bargaining agreement.

Dated at Madison, Wisconsin this 9th day of January, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Commissioner

  
Gary L. Covelli, Commissioner