

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
BELOIT CITY EMPLOYEES LOCAL 643,	:	
AFSCME, AFL-CIO	:	Case XLII
	:	No. 24511 Med/Arb-367
To Initiate Mediation-Arbitration	:	Decision No. 17033-A
Between Said Petitioner and	:	
	:	
CITY OF BELOIT	:	

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER DISMISSING PETITION

Beloit City Employees Local 643, AFSCME, AFL-CIO, herein the Union, having on May 4, 1979 filed a petition with the Wisconsin Employment Relations Commission wherein it alleged that an impasse existed between it and the City of Beloit, herein the City, in their collective bargaining, and wherein it requested that the Commission initiate mediation-arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act (MERA); and the Commission having assigned Peter G. Davis, a member of its staff, to investigate said petition; and on May 17, 1979, the City having moved that said petition be dismissed by the Commission; and hearing with respect to the City's motion having been held before Investigator Davis in Beloit, Wisconsin on May 25, 1979, and the parties having submitted briefs by June 25, 1979; and the Commission having considered the evidence and arguments of the parties, makes and files the following Findings of Fact, Conclusion of Law and Order:

FINDINGS OF FACT

1. That Beloit City Employees Local 643, AFSCME, AFL-CIO, herein the Union, is a labor organization maintaining offices at 5 Odana Court, Madison, Wisconsin.
2. That the City of Beloit, herein the City, is a municipal employer maintaining offices at the Beloit Municipal Center, Beloit, Wisconsin.
3. That at all times material herein the Union has been and is the exclusive collective bargaining representative of certain employees of the City including "regular full-time employees of the Department of Public Works and Sewage Treatment Plant of the City of Beloit, including employees of the golf course, cemeteries, street department, park and forestry departments, sanitary landfill, garbage collectors and bus drivers, but excluding employees in central stores, east-side swimming pool, west-side swimming pool, the sewage treatment laboratory, and supervisory and executive personnel;" that on November 30, 1978 the Union and the City reached tentative agreement regarding the terms of a collective bargaining agreement which was to succeed their 1977-1978 contract upon its December 31, 1978 expiration; that on December 13, 1978 the Union membership met and ratified the tentative agreement by a vote of 27-26; that during the ratification meeting certain Union members expressed concern as to whether absent members had been given a reasonable opportunity to attend the meeting and vote under that portion of the Bill of Rights of the Union's International Constitution which states:

PARTICIPATION IN DECISIONS

7. Members shall have the right to full participation through discussion and vote, in the decision-making

processes of the union, and to pertinent information needed for the exercise of this right. This right shall specifically include decision concerning the acceptance or rejection of collective bargaining contracts, memoranda of understanding, or any other agreements affecting their wages, hours, or other terms and conditions of employment. All members shall have an equal right to vote and each vote cast shall be of equal weight.

That at approximately 10:00 p.m., after the Conclusion of the membership meetings Al Laskowski, a Union bargaining committee member, notified Larry Tyler, City Personnel Director, that the Union had ratified the tentative agreement, that shortly thereafter Laskowski received two absentee ballots from Union members who wished to vote against ratification of the tentative agreement; that Laskowski then informed Tyler that the ratification was in doubt; that on December 14, 1978 Laskowski contacted Robert Oberbeck, Executive Director of AFSCME District Council 40, and was informed that the absentee ballots Laskowski had received were invalid because they were presented after the ratification meeting was adjourned; that later the same day Laskowski and the Union's District Representative, Darold O. Lowe, telephonically notified the City that the tentative agreement had indeed been ratified; that on December 18, 1978 the City ratified the parties' tentative agreement and implemented same shortly thereafter; and that Tyler then received the following letter from Lowe dated December 19, 1978:

Please be advised that I have been informed that Local 643, AFSCME, AFL-CIO, has ratified the Agreement between the City of Beloit and the Local for the years of 1979 and 1980. I have received the copy of the changes and agree that they are the amendments which were agreed to. When the City has the Agreements typed for signatures, please let us know and the officers will come in and sign the Agreement.

4. That on December 21, 1978 a member of the Union notified Lowe of his intent to challenge the validity of the contract ratification; that during the Union's January 10, 1979 meeting such a challenge was successfully presented to the Union membership who directed the Union officers to conduct a new vote on the tentative agreement; that on February 1, 1979 the Union membership voted to reject the tentative agreement; that by a letter dated February 20, 1979 Lowe notified Tyler of the rejection and submitted certain bargaining proposals; that on April 30, 1979 the parties met and the City informed the Union that it believed it already had a binding contract and thus would not bargain on the contractual changes proposed by the Union; and that the Union then filed the instant petition for mediation-arbitration which led to the instant motion to dismiss.

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

CONCLUSION OF LAW

That inasmuch as Beloit City Employees Local 643, AFSCME, AFL-CIO and the City of Beloit reached agreement upon the terms of a new contract, no dispute exists as to wages, hours, and conditions of employment to be included in a new collective bargaining agreement and thus mediation-arbitration under Section 111.70(4)(cm)6, Wis. Stats. is unavailable.

Upon the basis of the foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

No. 17033-A

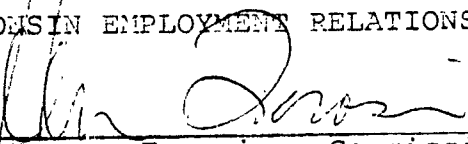
ORDER

That the instant petition for mediation-arbitration be, and the same hereby is, dismissed.

Given under our hands and seal at the
City of Madison, Wisconsin this 1st
day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Herman Torosian, Commissioner



Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER DISMISSING PETITION

The City has moved that the instant petition for mediation-arbitration be dismissed. Said motion is based upon the City's belief that when it ratified and implemented the terms of the parties' tentative agreement, it reasonably relied upon the verbal and written statements by Union representatives indicating the Union had ratified said agreement; that by said statements the Union became bound by the terms of said agreement; and that the Union should therefore not be allowed access to the mediation-arbitration procedure. The Union opposes said motion by arguing that it has an obligation to insure that all members are given a reasonable opportunity to vote on the tentative agreement; that it reasonably concluded that such an opportunity was not extended to all members on December 13, 1978; that it therefore, in good faith, conducted a new ratification vote which led to the rejection of the tentative agreement; and that its petition for mediation-arbitration is thus valid inasmuch as no bargaining agreement currently exists.

Section 111.70(4)(cm)6 of Municipal Employment Relations Act specifies that mediation-arbitration is available for the resolution of disputes between parties regarding "...wages, hours and conditions of employment to be included in a new collective bargaining agreement...". If, as the City alleges, the parties have already reached a binding contractual settlement, its motion must be granted inasmuch as there would be no dispute over the terms of a new contract to be resolved through mediation-arbitration. After considering the record and the respective arguments of the parties, the Commission concludes that a binding agreement does exist and thus that the Union's petition for mediation-arbitration must be dismissed.

When informed by Union representatives Lowe and Laskowski that the tentative agreement had been ratified, the City reasonably concluded that all conditions precedent to the effective consummation of a new bargaining agreement, including the resolution of challenge to the ratification process, had been met and proceeded itself to ratify the agreement and implement same. Once the City received notice of ratification and took action to ratify and implement in reasonable reliance thereon, the Union became bound to the terms of the now mutually ratified agreement.^{1/} To conclude in the instant context that the Union, even when acting upon a good faith belief that its ratification process was flawed, could successfully reverse its ratification decision would create an awesome and unacceptable potential for uncertainty and chicanery within the collective bargaining process which would fly in the face of the the goal of peaceful and harmonious bargaining relationships which MERA attempts to encourage. Having concluded that the parties have

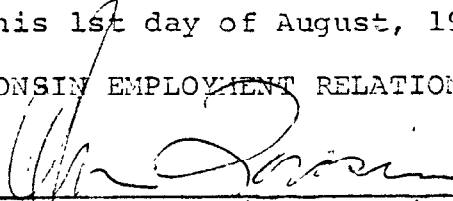
1/ S & M. Mfg. Co. 168 NLRB 389 (1967) 67 LRRM 1015; HU & AC Contractors Assn., Inc. 170 NLRB No. 44 (1968) 67 LRRM 1615; NLRB V. Truck Drivers Local No. 100 532 F.2d 569 (6th Cir. 1976) 91 LRRM 2849

indeed reached agreement on new contractual terms, the Commission has dismissed the instant petition inasmuch as no dispute exists for mediation-arbitration to resolve.

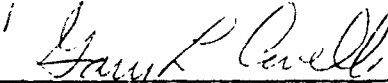
Dated at Madison, Wisconsin this 1st day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Herman Torosian, Commissioner



Gary L. Covelli, Commissioner