

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE DISTRICT COUNCIL 48,	:	
AMERICAN FEDERATION OF STATE, COUNTY	:	
AND MUNICIPAL EMPLOYEES, AFL-CIO	:	Case CXXXIV
and its affiliated LOCAL 366,	:	No. 24834 MP-997
	:	Decision No. 17122-A
Complainant,	:	
	:	
vs.	:	
	:	
MILWAUKEE METROPOLITAN SEWERAGE	:	
DISTRICT,	:	
	:	
Respondent.	:	
	:	

Appearances

Podell, Ugent & Cross, S.C., by Mr. Alvin R. Ugent, Attorney at Law, 207 E. Michigan Street, Suite 315, Milwaukee, Wisconsin 53202, appearing on behalf of the Complainant.

Mr. Nicholas M. Sigel, Assistant City Attorney, 800 City Hall, 200 E. Wells Street, Milwaukee, Wisconsin 53202, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Milwaukee District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO and its affiliated Local 366, having on June 29, 1979 filed a complaint with the Wisconsin Employment Relations Commission wherein the Complainant alleged that Milwaukee Metropolitan Sewerage District had committed prohibited practices within the meaning of the Municipal Employment Relations Act (MERA); and the Commission having appointed Thomas L. Yaeger, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order in the matter as provided in Section 111.07(5) of the Wisconsin Statutes; and a hearing on said Complaint having been held on September 13, 1980; and the Milwaukee Metropolitan Sewerage District having filed a post-hearing brief on November 13, 1980; and the Examiner, having considered the evidence and arguments and being fully advised in the premises makes and enters the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Milwaukee Metropolitan Sewerage District, hereinafter referred to as the Respondent or Sewerage District, is a municipal employer with its principal office located at 735 North Water Street, Milwaukee, Wisconsin 53202.
2. That Milwaukee District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO and its affiliated Local 366, hereinafter referred to as the Complainant or Local 366, is a labor organization with its principal offices located at 3427 W. St. Paul Avenue, Milwaukee, Wisconsin 53208, and is the certified collective bargaining representative for that bargaining unit which includes the positions in dispute herein.

3. That Local 366 and the Sewerage District were, for the period January 1, 1977 through December 31, 1978, parties to a collective bargaining agreement governing wages, hours and conditions of employment; that said collective bargaining agreement contained among its provisions a grievance procedure which culminated in final and binding arbitration, a laboratory promotion plan and position descriptions for the series of Laboratory Technicians classifications and

PART V

S. Miscellaneous Provision.

. . . .

5. New Operation, Equipment or Positions. The wage rates for full-time positions on new equipment, operations or jobs, and the manner in which they are assigned by management, shall be negotiated and agreed between the parties, provided said new positions are within the work scope of the bargaining unit.

. . . .

and that said agreement expired December 31, 1978 and the parties did not extend same even though they did agree to indefinitely adhere to grievance and arbitration provisions contained therein.

4. That on April 5, 1979 the Sewerage District informed Local 366 that it intended to create three new positions, Laboratory Technician I, II, and III - Aquatic Biologist, provided Local 366 with proposed job descriptions for said positions and requested to open negotiations on wages, hours and conditions of employment for said positions; that on April 16, 1979 the parties met and discussed the wages, hours and conditions of employment of said positions, the job descriptions for said positions and the reasons why said positions were being created; that on April 17, 1979 the parties met again and the Sewerage District again explained the need for said positions and presented revised job descriptions to Complainant; that on May 18, 1979 the Commission issued a declaratory ruling providing that the aforesaid Part V, Section 5 of the parties collective bargaining agreement dealt with a permissive subject of bargaining; and that thereafter on June 3, the matter of said positions was again discussed at a mediation session for a successor agreement to the 1977-1978 collective bargaining agreement that expired on December 31, 1978.

5. That on June 8, 1979 the Sewerage District informed Local 366 that inasmuch as they had now agreed upon the wages and hours for said positions and the only dispute between them concerned the Union's contention that new positions were not needed because the qualifications of the then present Laboratory Technicians were sufficient to accomplish the goals of the new positions it was proceeding with the new positions and attendant descriptions and qualifications; and that the Sewerage District did thereafter implement said decision.

6. That at no time did Local 366 file or attempt to grieve the alleged violation of Part V, Section 5 of the collective bargaining agreement between the parties.

On the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSIONS OF LAW

1. That Part V, Section S. 5 of the parties 1977-78 collective bargaining agreement expired as a permissive subject of bargaining when the agreement expired on December 31, 1978.

2. That Respondent did not breach Part V of the 1977-78 collective bargaining agreement when in or about June 1979, it established without Complainant's agreement, the Laboratory Technician I, II, III - Aquatic Biologists positions, and therefore, did not commit a prohibitive practice within the meaning of Section 111.70(3)(a)5 of the Municipal Employment Relations Act.

3. That Respondent did not have a duty to bargain with Complainant regarding its decision to establish the Laboratory Technician I, II and III - Aquatic Biologist positions and attendant qualifications which are permissive subjects of bargaining within the meaning of Section 111.70(1)(d) of the Municipal Employment Relations Act and, therefore, Respondent by its conduct herein has not committed a prohibited practice within the meaning of Section 111.70(3)(a)1, 2 or 4 of the Municipal Employment Relations Act.

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

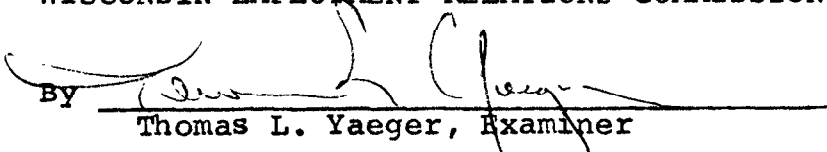
ORDER

That the complaint filed in the instant matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 13th day of January, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Thomas L. Yaeger, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Complainant contends that the Sewerage District breached the contract between the parties and committed a prohibited practice in violation of Section 111.70(3)(a)5, Municipal Employment Relations Act, when the Sewerage District established the Laboratory Technician I, II and III - Aquatic Biologist positions and attendant qualifications without first obtaining Local 366's agreement as required by Part V, Section S. 5 of the parties 1977-78 collective bargaining agreement. The facts, however, reveal that there is no merit to Complainant's contention.

The agreement between the parties had expired on December 31, 1978. The Commission has previously held that there is no bargaining duty to maintain the status quo, at least to the point of impasse, on permissive terms of an expired contract. 1/ Section S. 5 of Part V which required the parties "to agree" was declared a permissive subject of bargaining by the Commission on May 18, 1979. 2/ As the agreement between the parties had expired and the Section of S. 5 Part V which required the parties "to agree" had been declared permissive, there was not an existing contract provision for Respondent to breach. Consequently, the Examiner must reject Complainant's allegation that Respondent's decision to establish said positions and attendant qualifications on June 8, 1979 without Local 366's agreement was a violation of the parties collective bargaining agreement and a prohibited practice. 3/

Complainant relies primarily on Part V, Section S. 5 of the agreement to support its position that the Sewerage District refused to bargain in good faith over the wages, hours and conditions of employment of the Laboratory Technician I, II, and III - Aquatic Biologist positions. It claims the Sewerage District's implementation of said positions without agreement between the parties, contrary to the requirements of said provision is proof that the Sewerage District never intended to bargain in good faith.

1/ Greenfield Education Association, (14026-B) 11/77.

2/ Sewerage Commission of the City of Milwaukee, (17025) 5/79.

3/ It is Commission policy not to assert its jurisdiction to determine the merits of breach of contract allegations of parties to a collective bargaining agreement that provides for final and binding arbitration where said procedure has not been exhausted by the parties, Lake Mills Joint School District No. 1, (11529-A) 7/73; Oostburg Joint School District No. 1, (11196-A) 11/72. In the instant matter the parties expired collective bargaining agreement contained a grievance procedure which culminates in final and binding arbitration. Upon and after expiration the parties had continued to use said grievance procedure. Local 366 never filed a grievance on the alleged violation of the agreement, nor did it introduce any evidence to demonstrate that the Sewerage District would refuse to process such a grievance. Therefore, in this instance even had there been a provision in existence which Complainant could have alleged had been violated, the Commission would not have asserted its jurisdiction to determine the merits of said allegation.

Further, it argues that the duties of the Laboratory Technician I, II and III - Aquatic Biologist positions are the same as those performed by current Laboratory Technicians, and that when the Sewerage District created different qualifications for the Aquatic Biologist positions it was doing so in order to prevent existing bargaining unit members from exercising their rights under the Laboratory Service Promotion Plan of the agreement. Last, it contends that the Sewerage District's implementation of said positions even though it wanted to negotiate the impact of the new qualifications on bargaining unit members is further evidence of bad faith.


The Sewerage District contends that the parties were at impasse inasmuch as the position taken by Local 366 was that the jobs in question were unnecessary and that existing Laboratory Technicians could perform the work and had performed the work in the past. Respondent argues it had explained the qualification and duties of said positions were similar to existing Laboratory Technician positions, but that the area of specialty was in the biologic sciences, whereas the area of specialty of existing Laboratory Technician positions was in the chemical sciences. Respondent claims that inasmuch as the parties were in agreement on wages and hours for the new positions 4/ before it implemented said positions it had fulfilled its statutory obligations to Complainant.

The Commission has previously held that the selection criteria for a municipal employer's hiring decision becomes a mandatory subject of bargaining when the selection is from a group which includes one or more bargaining unit members. 5/ However, the arguments raised herein by Complainant concern the qualifications necessary to carry out the duties and responsibilities of the new positions, and the Commission has distinguished the selection criteria to be applied in choosing between qualified candidates from the right of a municipal employer to determine the qualifications necessary for the job, a permissive subject of bargaining. 6/ The record clearly demonstrates that the dispute between the parties relates to qualifications for the Laboratory Technician I, II and III - Aquatic Biologist positions, a matter about which it had no duty to bargain. Therefore, the Examiner can find no merit to Local 366's position that the Sewerage District's unilateral establishment and implementation of said positions and attendant qualifications constituted a refusal to bargain in good faith. Consequently, the Examiner finds that Respondent's conduct did not violate Sections 111.70(3)(a)1, 2 or 4, of MERA. 7/

Dated at Madison, Wisconsin this 13th day of January, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Thomas L. Yaeger, Examiner

-
- 4/ Local 366 stipulated at the hearing that the parties were in agreement on wages and hours.
- 5/ City of Madison (16590), 10/78; Sewerage Commission of the City of Milwaukee (17025), 5/79.
- 6/ Sewerage Commission of the City of Milwaukee, (17302), 9/79.
- 7/ No evidence was presented at the hearing nor did Local 366 present any arguments to substantiate that the Sewerage District attempted to initiate, create, dominate or interfere with the formation or administration of any labor or employe organization or contribute any financial support to it. Accordingly, the Examiner has also dismissed this complaint allegation.