STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

THE MADISON PROFESSIONAL POLICE OFFICERS ASSOCIATION,	:	
Complainant,	:	Case LXVI No. 25112 MP-1023
vs.	:	Decision No. 17300-B
CITY OF MADISON,	:	
Respondent.	:	

Appearances:
Lawton & Cates, Attorneys at Law, by Mr. Richard Graylow, 110 East Main Street, Madison, Wisconisn 53703, on behalf of the Complainant.
Mr. Timothy Jeffery, Director of Labor Relations, City of Madison, City-County Building, 210 Monona Avenue, Madison, Wisconsin 53709, on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

AMEDEO GRECO, HEARING EXAMINER: The Madison Professional Police Officers Association, herein the Association, filed the instant complaint on September 10, 1979, with the Wisconsin Employment Relations Commission, herein the Commission, which alleged that the City of Madison, herein the City, had committed a prohibited practice complaint within the meaning of Section 111.70(3)(a)1 and 4 of the Municipal Employment Relations Act (MERA). The Commission appointed Michael F. Rothstein to issue Findings of Fact, Conclusion of Law and Order as provided for in Section 111.07(5), Wis. Stats. and hearing on said matter was held in Madison, Wisconsin, on November 29, 1979. The parties thereafter filed briefs and the Complainant filed a reply brief. The Employer on April 18, 1980 moved to reopen the hearing for the purpose of taking new evidence. A hearing on the motion was set for May 29, 1980, but was indefinitely postponed with the understanding that the parties would file briefs addressed to the issues raised in the motion. The Commission on September 3, 1981, vacated the appointment of Examiner Rothstein who was no longer available to continue as Examiner, and appointed the undersigned to conduct further hearing in the matter and to issue Findings of Fact, Conclusions of Law and Order. A hearing on the motion to reopen the hearing was held in Madison, Wisconsin on October 19, 1981, at which time the Employer withdrew its motion. Having considered the arguments and evidence, the Examiner makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. The Association is a labor organization which represents law enforcement personnel in the positions of Police Officer, Special Investigator, Detective I, Detective II, Sergeant, and Detective Supervisor employed by the City of Madison.

2. The City is a municipal employer which operates a Police Department in Madison, Wisconsin.

3. The Association and the City were parties to a collective bargaining agreement which ran from December 24, 1978, to December 22, 1979.

4. For at least 17 years, the Police Department has had some form of in-service training in cardiac or pulmonary resuscitation. During that time, the resuscitation techniques and the manner of teaching those techniques have changed. In 1977 the Department adopted the Cardio-Pulmonary Resuscitation (CPR) program and the evaluation procedures of the American Heart Association (AHA). The CPR training occurred during in-service training in 1977 and again in 1979. During the two or three days of CPR training, the employes practiced on a mannequin which is equipped to evaluate and record the chest expansions and decompressions produced on the mannequin by the employe's CPR efforts.

5. Prior to the 1979 CPR training, Sergeant Frank Oswald complained to Captain Thomas Hischke that he had suffered discomfort to his mouth, hands, back and knees after the 1977 training. Captain Hischke offered several accommodations designed to allow Sergeant Oswald to accomplish the 1979 training without discomfort. Those accommodations included: an individual sterile mannequin that had not been swabbed with alcohol; a two-person, two-mannequined system; shorter training periods and knee pads; a protective shirt on the mannequin; a private room; and, if possible, a face mask for the mannequin. In addition, the City made similar such adjustments for other police officers who experienced difficulty in participating in the CPR program.

6. Employes who did not meet the AHA standards at the end of the 1979 training period, and who had not been excused by Captain Hischke for verified medical reasons, were ordered to participate in additional training.

7. On April 19, 1979 Attorney Richard Graylow, acting on behalf of the Association, wrote to Chief David Couper requesting that the Police Department cease and desist from further implementation of the CPR program until the Department had bargained the implementation of the program with the Association. Graylow there also requested that the City bargain over the impact of the CPR program.

8. On May 21, 1979 the Association filed a complaint with the Commission alleging that the City had committed a prohibited practice by its unilateral implementation of the CPR program. Said complaint was withdrawn June 26, 1979 pursuant to a settlement in which the City agreed to negotiate the impact of the CPR program with the Association.

9. Pursuant to said settlement, the Association during contract negotiations over a successor contract submitted a proposal to the City on or about July 17, 1979. The City submitted a counterproposal to the Association during the first week of August, 1979. The parties rejected the proposals offered by the other side, but exchanged letters stating their willingness to bargain further.

10. Shortly thereafter, in late summer or early fall of 1979, the parties met to negotiate the 1980 successor collective bargaining agreement. An Association proposal for compensation of employes successfully completing the CPR program was discussed and rejected by the City as too expensive. The contract negotiations were not completed by September 10, 1979.

11. On September 10, 1979 the Association filed the instant complaint alleging that the City violated 111.70(3)(a)1 and 4 by unilaterally setting the minimum CPR performance standards and implementation date, and by formulating discipline for employes who did not meet these standards. In a second count, the Association further alleges that the Employer has failed to comply with the June 26, 1979 settlement. 1/

12. The City's decision to implement a CPR program is primarily related to the formulation and management of public policy and it is not primarily related to wages, hours, and conditions of employment. Furthermore, the performance of CPR by police officers fairly falls within the scope of their duties.

13. The City has bargained with the Association over the impact of the CPR program.

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

CONCLUSION OF LAW

Inasmuch as the performance of CPR falls fairly within the scope of a police officer's job duties, the decision to implement a CPR program is not a mandatory

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1/ In its brief, the Association states: "The fact that the parties are continuing to negotiate is probably fatal to Count No. 2 of the Complaint and it should be dismissed." (p. 15) The record indeed substantiates that the parties at the time of the hearing were continuing to negotiate the impact of the City's decision to implement the CPR program. As a result, count 2 is therefore dismissed.

subject of bargaining. The City therefore did not unlawfully refuse to bargain over its decision to adopt a CPR program and it similarly did not refuse to bargain over the impact of that decision.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes and issues the following

ORDER 2/

It is ordered that the complaint is hereby dismissed in its entirety.

Dated at Madison, Wisconsin this 1st day of July, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco
Amedeo Greco, Examiner

2/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The Association asserts, and the City denies, that the decision to implement a CPR program is a mandatory subject of bargaining and that the City refused to bargain over the impact of that decision.

In earlier cases, when faced with the conflict between management's desire to assign work and a union's desire to bargain over work assignments, the Commission has determined that management has the right to unilaterally assign duties generally recognized as fairly within the scope of a job. Under this test, management has an obligation to bargain over only those duties which do not fall fairly within the scope of the responsibilities applicable to the kind of work performed by the employes involved. 3/ Therefore, the question here turns on whether CPR training does or does not fall fairly within the scope of a policeman's regular job duties.

In support of its position, the Association introduced the job descriptions and Oath of Office of the bargaining unit employes. While it is true that these descriptions and oaths do not specifically mention CPR, that omission from such general statements is insufficient to determine whether CPR qualifications in fact are fairly within the scope of police work.

As to the latter point, Inspector Emil S. Thomas testified that the Police Department's objective to protect life requires that the police officers to be able to render first aid, including CPR. According to Thomas, police officers are frequently the first persons to arrive at the scene of a serious incident. In addition, Captain Thomas F. Hischke testified that Madison Area Technical College, which trains police recruits in a six county area, includes CPR and first-aid training as part of its program.

The Association cites three earlier cases in which it was held that employers could not assign a disputed duty without first bargaining with the union involved. In City of Milwaukee 4/, for example, this Examiner held, and the Commission affirmed, that the employer could not unilaterally assign police matrons the duty of collating time cards because such a clerical function was not related to the matron's primary function of guarding and helping process female prisoners. In Oak Creek-Franklin Joint City School District No. 1 5/ the Commission held teachers could not unilaterally be assigned typing and duplicating duties because said duties had a minimal effect on educational policy. In City of Wauwatosa 6/ the Commission ruled that the employer had a duty to bargain over a proposal that the firefighters be relieved of the switchboard duties to which they were assigned roughly 16 hours a year. The Commission there held that the switchboard duties were normally performed by non-bargaining unit employes and as a result, were merely supportive of the firefighting function.

All three of these cases, then, are clearly distinguishable from the instant case as they involved duties which: 1) could logically be performed by others; and 2) more importantly, fell outside the scope of duties which the affected employes regularly performed. Here, on the other hand, there are no other City employes assigned to patrol the streets who are likely to be the first to arrive to the

scene of an accident or emergency. As a result, if police officers were not required to give CPR assistance - which must be performed immediately if it is to be effective - the City thereby would be prevented from fulfilling its public safety mission.

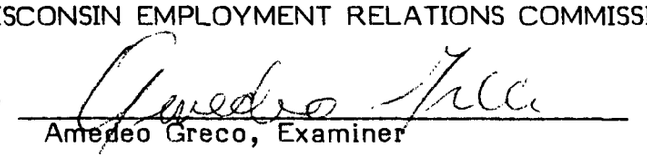
Secondly, since police officers are entrusted with this public safety mission, they are thereby required to perform the myriad of duties which are essential to the fulfillment of that goal. Here, since the administration of CPR involves a matter of life or death, it follows that the performance of that duty is directly related to that end. Indeed, the record shows that police officers over at least the last 17 years have performed similarly related rescue tasks. As a result, the City's decision to refine those rescue tasks by adopting a CPR program involves nothing more than an extension of the rescue duties which police officers traditionally have performed as part of their regular job duties.

In light of the foregoing, it must be concluded that the performance of CPR by police officers fairly falls within the scope of their duties and that, as a result, the City's decision to implement that program does not constitute a mandatory subject of bargaining.

As to negotiating over the impact of that decision, the record shows that the City bent over backwards to accommodate employes with medical excuses and that the City throughout the material times herein was willing to bargain over the impact of its decision. Furthermore, since the program herein involved a matter of life and death, and because it is a refinement of the pre-existing rescue program, and since the Association has failed to show how it was in any way prejudiced during its negotiations with the City, it was unnecessary for the City to hold up implementation of the CPR program pending resolution of its negotiations with the Association. 7/ Accordingly, there is no basis for finding that the City refused to bargain over the impact of the CPR program.

Dated at Madison, Wisconsin this 1st day of July, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Amedeo Greco, Examiner

7/ Milwaukee Sewerage Commission, supra.