

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

VILLAGE OF PEWAUKEE (POLICE DEPARTMENT)

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Case VI
No. 24932 ME-1706
Decision No. 17374-C

Melli, Shiels, Walker & Pease, Attorneys at Law, 119 Monona Avenue, Madison, Wisconsin, by Mr. Jack D. Walker and Mr. John Zawadsky, appearing on behalf of Grant County.

Pursuant to a Direction issued by it the Wisconsin Employment Relations Commission conducted an election among all regular full-time employes with police powers employed by the Village of Pewaukee Police Department, excluding the Chief of Police, confidential, managerial and executive employes, and supervisory employes, including sergeants, to determine whether said employes desired to be represented by the Wisconsin Professional Police Association, or by Wisconsin Police Negotiators, Ltd., or by neither of said organizations, for the purposes of collective bargaining with the Village of Pewaukee; and, pursuant to an agreement between said parties, the ballots were impounded and not counted, as a result of issues relating to whether the Wisconsin Professional Police Association and its affiliates could properly be permitted to represent non-supervisory law enforcement personnel for the purposes of collective bargaining, since said Association admitted into its membership executive and managerial law enforcement personnel; and the instant matter was held in abeyance pending the possible resolution of similar issues in three complaint cases 1/ involving the Association as a party; and the Commission having issued a decision in said cases on October 17, 1980, wherein the Commission determined the impact of membership of supervisory law enforcement personnel in the Association, but made no such determination with respect to Association membership by managerial and executive law enforcement personnel, for the reason that no proof was adduced with respect thereto in the complaint proceedings; and thereafter, and on October 22, 1980, the Commission having notified all interested parties that hearing in the instant matter would be conducted to elicit evidence relating to the effect of membership of managerial and/or executive law enforcement personnel, if any, in the Association; and such hearing having been conducted by the full Commission on November 19, 1980 at Madison, Wisconsin; and the Association and Wisconsin Police Negotiators, Ltd. having appeared by Counsel, and Counsel for Grant County and for Teamsters Local Nos. 199, 662 and 695 having been permitted to intervene in the

No. 17374-C

matter; and the Commission having considered the entire record 2/ and the briefs of the parties, the last of which was filed on January 20, 1981, and being fully advised in the premises, makes and issues the following

INTERIM FINDINGS OF FACT

1. That Wisconsin Professional Policemen's Association, also known as Wisconsin Professional Police Association, hereinafter referred to as WPPA, has its offices at Madison, Wisconsin; that Law Enforcement Employee Relations, hereinafter referred to as LEER, is affiliated with, and is a division of WPPA; that LEER has its offices at Brookfield, Wisconsin; and that WPPA, as well as LEER, represents municipal law enforcement personnel for the purposes of collective bargaining.

2. That the Village of Pewaukee, hereinafter referred to as the Village, is a municipal employer having its offices at 235 Hickory Street, Pewaukee, Wisconsin; and that the Village in performance of its municipal functions operates a police department, headed by Chief Krcuse, who is a member of WPPA.

3. That Wisconsin Police Negotiators, Ltd., hereinafter referred to as WPN, represents municipal law enforcement personnel for the purposes of collective bargaining, and has its offices at Milwaukee, Wisconsin; that at least prior to July 11, 1979 WPN was recognized by the Village as the exclusive collective bargaining representative of non-supervisory law enforcement personnel in the employ of the Village; that on July 11, 1979 Jeffrey M. Anderson, Executive Director of WPPA, on behalf of LEER, affiliated with the WPPA, filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, requesting that an election be conducted among said law enforcement personnel to determine whether said personnel desired to be represented by WPPA, or whether they desired to continue to be represented by WPN, for the purposes of collective bargaining with the Village; and that prior to further action by the Commission, WPPA, by Anderson, WPN, by its Counsel, and the Village, by its Counsel, filed a stipulation with the Commission requesting that a representation election be conducted among all regular full-time employees with police powers employed by the Village in its police department, excluding the Chief of Police, confidential, managerial and executive employees, and supervisory employees, including sergeants, for the purposes of determining whether such employees desire to be represented by WPPA, or by WPN, or by no organization, for the purposes of collective bargaining with the Village; that on October 29, 1979 the Commission directed that such election be conducted, pursuant to the agreement between the parties to the effect that the ballots cast in said election would be impounded pending the disposition of a complaint proceeding initiated by WPN, alleging that WPPA had committed certain prohibited practices by permitting into its membership supervisory law enforcement personnel; and that the election so directed was conducted on November 30, 1979 and the six law officers eligible to vote all cast ballots, which as of the date hereof remain impounded.

4. That WPPA is a non-stock corporation, created pursuant to Chap. 181, Wis. Stats.; that at the time of the hearing herein its membership consisted of some 3,573 law enforcement officers in the employ of various public law enforcement agencies situated in the State; that included in said membership were some 73 individuals identified as managerial and executive officers, of which some 26 Chiefs of Police were employed by the same number of municipal employers situated in the State; that the Sheriffs of four counties are also members of WPPA; that there are some 140 local affiliates

2/ The record made in the above three complaint cases was incorporated in the record of the instant case.

of WPPA, some of which contain among their membership only officers who are neither managerial, executive, nor supervisory; that other local affiliates have among their membership combinations of managerial, or executive, or supervisory, and rank and file officers; that at least as of the date of the hearing herein the WPPA constitution and by-laws makes no distinction with respect to membership, regardless of the fact that members held managerial, executive, supervisory, or rank and file law enforcement positions; that, however, on November 10, 1980 the WPPA Board of Directors adopted a motion to the effect that members who occupied managerial and executive law enforcement positions would become only honorary members, carrying no voting rights and would not pay any dues to WPPA, but said motion will not become effective until such time as it is finally approved during WPPA's annual convention in May, 1981; that prior to May, 1980, the WPPA Board of Directors consisted of 28 members, 5 of whom WPPA admits hold the rank of managerial, executive or supervisory law enforcement positions as follows:

Donald Cuene - Chief of Police, City of Green Bay
Donald Haralson - Assistant Chief of Police, City of Marshfield
Charles Wolbert - Captain, City of Cudahy
Thomas Havlik - Sergeant, City of LaCrosse
Norbert Nelson - Sergeant, City of Manitowoc

5. That Donald Cuene resigned from said Board of Directors in May, 1980; that Donald Haralson has indicated an intent to resign from said Board, but as of the date of the hearing herein had not done so; that Norbert Nelson has resigned, but that Captain Wolbert and Sergeant Havlik remain as members of the Board.

6. That prior to the latter part of May, 1979 WPPA, itself, and in its own name engaged in organizational activities among law enforcement personnel for the purposes of collective bargaining, and had been certified as the collective bargaining representative of such personnel in the employ of various municipal employers; that in certain instances it also furnished guidance and assistance to local affiliates in their collective bargaining with municipal employers; that WPPA created LEER on May 22, 1979, for the purpose of representing law enforcement personnel in collective bargaining; that LEER does not now admit supervisory law enforcement personnel into its membership, although it did so through 1979; that while in 1979 LEER assisted two supervisory law enforcement units in their collective bargaining, however it no longer performs this function; and that the services offered by LEER include either a "full service" plan, paid for by fixed dues paid by members of locals affiliated with WPPA, or services rendered to WPPA locals which are paid to LEER on an hourly basis.

7. That Patrick Coraggio is the full-time Administrator of LEER as it now exists, and has been so since September 1, 1979; that Coraggio maintains an office in Brookfield, which is designated as LEER's and which since September, 1979 has been separate from WPPA's Madison office; that prior to that date LEER used the WPPA's Madison office and phone for a time; that Coraggio was hired by the WPPA Board, of which he was a member, and is now paid on a sliding scale according to the number of members represented by LEER; that the WPPA office handles the money for LEER's, as well as WPPA's, accounts, allocates dues money into the different funds, and signs Coraggio's pay checks; that the WPPA start-up money for LEER was in the form of several grants followed by a larger sum of \$25,000, in the form of a no-interest loan repayable at a minimum of \$500 per year over a maximum of fifty years, all voted upon by the WPPA Board, which has also received and voted approval of the LEER by-laws and of at least one general "progress report" of LEER; that managerial and executive members have not apparently disqualified themselves from participation in these votes; and that the WPPA Board can amend LEER's structure and functions and that the WPPA Board has discussed, as a board, at least one subject of collective bargaining significance (mandatory retirement) since the formation of the LEER Division.

8. That there are available to all members of WPPA, benefits unrelated to collective bargaining matters, such as group insurance plans, certain types of professional workshops and seminars, certain types of lobbying activity in the State Legislature, and annual sporting events.

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

INTERIM CONCLUSION OF LAW

That, because of the fact that managerial and executive law enforcement personnel employed by various municipal employers in this State, including Chief Krouse, who is employed by the Village of Pewaukee, presently are regular members of the Wisconsin Professional Police Association, and as such, exercise the right of full membership, the status of the Wisconsin Professional Police Association, and that of any of its affiliates, including Law Enforcement Employee Relations, will not be deemed to constitute "labor organizations" within the meaning of that term, as defined in Sec. 111.70(1)(j), of the Municipal Employment Relations Act, should the membership of the Wisconsin Professional Police Association, in its annual convention to be held in May, 1981, continue to permit managerial and executive law enforcement personnel to become and/or remain members, other than honorary, in said Association, or in any affiliate thereof.

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

INTERIM ORDER

That the Wisconsin Professional Police Association, by its duly authorized officers, shall within forty-five (45) days from the date hereof, submit to the Wisconsin Employment Relations Commission, a notarized copy of that portion of the minutes of its annual convention to be held in May, 1981, reflecting the action taken by its membership with reference to the type of membership, if any, available to managerial and executive law enforcement personnel employed by any municipal employer in this State, and at the same time serve copies thereof upon the other parties to this proceeding, and upon their Counsel.

Given under our hands and seal at the City of Madison, Wisconsin, this 4th day of May, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Gary L. Covelli
Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING INTERIM
FINDINGS OF FACT, INTERIM CONCLUSION
OF LAW AND INTERIM ORDER

The issues in the instant proceeding, which revolve around the question as to whether the involvement of managerial and/or executive personnel in an employe organization, under the Municipal Employment Relations Act (MERA) invalidate such an organization, and in this case, the WPPA, for the purposes of representing law enforcement personnel in collective bargaining with municipal employers, are residual questions unearthed by, but not fully treated in, the prohibited practice cases filed by WPN and Teamsters Local 695 in Wisconsin Professional Police Association et al, I, II and III. We will not here recapitulate our decisions in said cases, which together with the Order for Hearing herein, lays out the basis for this proceeding.

Over the years the Commission has certified WPPA and/or its various Locals as the exclusive collective bargaining representative of numerous units consisting of non-supervisory law enforcement personnel in the employ of numerous municipal employers without any contention by municipal employers or other employe organizations 3/ that WPPA and/or its Locals were impermissibly dominated or controlled, or influenced, by managerial and executive law enforcement personnel who held office in WPPA or who were only dues paying members. In addition WPPA and/or its various Locals have been granted voluntary recognition by many municipal employers.

At the hearing herein all parties stipulated that managerial and executive law enforcement personnel have, to date, been permitted to become and remain regular members of WPPA, and to exercise all rights and privileges of such regular membership. Such personnel have been elected to responsible offices in said organization, including the office of President, and membership on its Board of Directors. As we found in the prohibited practice cases involving WPPA that there exists a nexus between WPPA and its collective bargaining arm, known as LEER, and further, that the Board of Directors of WPPA exercises ultimate control over LEER. Thus, there exists, at least, a potential for municipal employers, through membership in WPPA by its managerial and/or executive law enforcement personnel, to dominate, or control, or to influence, the collective bargaining function of WPPA and/or its affiliates.

In the administration of our municipal employer-employe collective bargaining statute, and some time prior to the enactment of the present MERA, the Commission was called on to determine whether membership by supervisory personnel in the Wisconsin Education Association was such as to dominate that organization, 4/ and thus prevent it from properly representing employes employed by various school districts throughout this State. In said decision we stated as follows:

Good faith bargaining as envisaged by Section 111.70 requires that there be two parties confronting each other on opposite sides of the bargaining table. Supervisory personnel, because of their status with a municipal employer, could create a situation where the municipal employer would be dealing with itself if the supervisors were allowed to control the bargaining representative.

3/ Except in the instant case and in other cases presently pending before the Commission.

4/ Jt. City School Dist. No. 1 of the City of West Allis, et al (6544) 11/63.

The law abhors any possible conflict of interest or even a taint of conflict of interest. However, there is nothing in Sec. 111.70 which provides that mere membership of supervisors in a labor organization contaminates that organization for purposes under the Statute. The fact that supervisory personnel are members of, or may hold office in, any labor organization subject to the provision of Sec. 111.70 may raise a suspicion, but does not in itself establish domination or interference with the organization by the municipal employer employing such supervisory personnel. The number of supervisors among the membership of the organization and the ratio of supervisors to other members are factors to be evaluated in each case. Likewise, the office held by supervisors and the extent to which they formulate the bargaining policy and programs of their labor organizations will also be scrutinized in each case.

The enactment of MERA, some eight 5/ years after the above decision, resulted in requiring the Commission to consider provisions in said Act specifically relating to the effect of membership of supervisory employees in employee organizations. Sec. 111.70(3)(a)2, which is still in effect, provides that it is a prohibited practice for a municipal employer:

To initiate, create, dominate or interfere with the formation or administration of any labor or employee organization or contribute financial support to it, but the employer shall not be prohibited from reimbursing its employees at their prevailing wage rate for the time spent conferring with the employees, officers or agents. Supervisors may remain members of the same labor organization of which their subordinates are members, but such supervisor shall not participate in determinations of the collective bargaining policies of such labor organization or resolution of grievances of employees. After January 1, 1974, such supervisors shall not remain members of such organizations. 6/

In addition the following provision, set forth in Sec. 111.70(3)(d), also effective November 11, 1971, provided as follows:

Nothing in this subchapter shall preclude law enforcement or firefighting supervisors from organizing separate units of supervisors for purposes of negotiating with their municipal employers. The commission shall by rule establish procedures for certification of such units of supervisors and the levels of supervisors to be included. The commission may require that the representative in a supervisory unit shall be an organization that is a separate local entity from the representative of the employees but such requirement shall not prevent affiliation by a supervisory representative with the same parent state or national organization as the employee representative.

Pursuant to the directive contained in the above statutory provision the Commission adopted rules relating to certification of such supervisory bargaining units. Such rules became effective July 1, 1972. Rule ERB 17.01, in part, provides as follows:

5/ MERA became effective on November 11, 1971.

6/ Emphasis added.

Since Section 111.70(1)(b), Wis. Stats., specifically excludes confidential, managerial and executive employees, as well as supervisors, from the term 'municipal employee', supervisors who perform confidential, managerial or executive duties shall be excluded from units of supervisory law enforcement or firefighter personnel.

Chapter 442, Laws of 1977, effective June 7, 1978, amended Sec. 111.70(3)(d) so as to renumber said section as new Sec. 111.70(8), and also to read as follows:

Supervisory units. This subchapter does not preclude law enforcement or fire fighting supervisors from organizing in separate units of supervisors for purposes of negotiating with their municipal employers. The commission shall by rule establish procedures for certification of such units of supervisors and the levels of supervisors to be included in the units. The commission may require that the representative in a supervisory unit shall be an organization that is a separate local entity from the representative of the nonsupervisory municipal employees, but such requirement does not prevent affiliation by a supervisory representative with the same parent state or national organization as the nonsupervisory municipal employee representative. In cities of the 1st class, this section applies to law enforcement supervisors. For such purposes, the term 'municipal employee' includes law enforcement supervisors in cities of the 1st class.

It should be noted that another statute administered by the Commission, the Wisconsin Employment Peace Act (WEPA), relating to labor relations involving private, rather than public, sector employers and their employees, contains the following provision with respect to unfair labor practices relating to employers, namely, Sec. 111.06(1)(b):

(1) It shall be an unfair labor practice for an employer individually or in concert with others:

. . .

(b) To initiate, create, dominate or interfere with the formation or administration of any labor organization or contribute financial support to it, provided that an employer shall not be prohibited from reimbursing employees at their prevailing wage rate for the time spent conferring with him, nor from co-operating with representatives of at least a majority of his employees in a collective bargaining unit, at their request, by permitting employee organizational activities on company premises or the use of company property facilities where such activities or use create no additional expense to the company, provided, however, that it shall not be an unfair labor practice for an employer to become a member of the same labor organization of which his employees are members, when he and they work at the same trade. 7/

7/ Emphasis added.

Further, under the State Employment Labor Relations Act (SELRA), the provisions thereof establish separate definitions for the terms "supervisor," 8/ and "management," 9/ permits the establishment of separate units for "professional supervisory" and "non-professional supervisory" employees, but that the representative of such units "may not be affiliated with labor organizations representing employees" assigned to units consisting of non-supervisory employees. 10/ Also under SELRA "professional supervisory or craft personnel may maintain membership in professional or craft organizations; however as members of such organizations they shall be prohibited from those activities related to collective bargaining in which the organization may engage." 11/

On the basis of the cited provisions of WEPA and SELRA, as well as the various amendments to MERA, noted previously, we conclude that the Legislature in MERA did not intend that management and executive personnel in the employ of municipal employers could become and/or remain regular members of organizations representing either law enforcement or firefighting employees or supervisors, regardless of the nature of the participation of such managerial or executive personnel in the affairs of such organizations, since such membership could very well affect the status of such an organization with respect to its function in representing employees and supervisors for the purposes of collective bargaining.

In the complaint cases involving WPPA, previously referred to herein, we stated:

It may be argued, where a managerial or executive law enforcement officer, who is a member of WPPA and where WPPA, or one of its Locals, represents non-supervisory employees of a particular employer, that said municipal employer could be charged with contributing financial support to said representative by the payment of dues by said managerial or executive officer in its employ, in violation of Sec. 111.70(3)(a)2 of MERA. Such membership, it could be argued, affects the capacity of WPPA and/or its Locals to act as a collective bargaining representative of non-supervisory law enforcement personnel.

However, we note that WPPA, its various Locals, and also LEER have represented law enforcement personnel for the purposes of collective bargaining for a number of years without challenge to their status as "employee" organizations, at least up to the instant and companion cases. Further, during the course of the hearing herein, the representatives of WPPA have testified that in the coming spring meeting of the membership of WPPA, to be held in May 1981, its membership will entertain steps to prohibit managerial and executive law enforcement personnel from holding active, dues paying membership in WPPA, and in any of its affiliated organizations. Therefore, the Commission has issued this interim, rather than its final, decision. Following the time period set forth therein, the Commission will review the results of WPPA membership action with regard to the matter, and thereafter will issue its determination with respect to the issues remaining in this proceeding, as well as in the other election cases involving WPPA, which are presently pending before the Commission.

8/ Sec. 111.81(19).
9/ Sec. 111.81(20).
10/ Sec. 111.81(3)(d).
11/ Sec. 111.84(1)(b).

Should WPPA membership, in its coming meeting, take the necessary action to exclude managerial and executive law enforcement personnel from being regular members of WPPA and/or any of its affiliates, we will deem WPPA and its affiliates to properly constitute "labor organizations" within the meaning of Sec. 111.70(1)(j) of MERA, and as such, proper organizations for the purpose of representing law enforcement personnel in collective bargaining.


Should such action not be taken by such membership, WPPA and/or its affiliates, will be found by this agency not qualified to represent law enforcement personnel for the purposes of collective bargaining with municipal employees in this State.

Dated at Madison, Wisconsin, this 4th day of May, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner