

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

OUTAGAMIE COUNTY PROFESSIONAL
POLICE ASSOCIATION,

Complainant,

vs.

OUTAGAMIE COUNTY (SHERIFF'S DEPARTMENT),

Respondent.

Case LXII

No. 25209 MP-1039

Decision No. 17393-B

Appearances:

Patterson, Jensen, Wylie & Siltan, S.C., Attorneys at Law, by
Mr. James R. Hill, appearing on behalf of the Association.
Lindner, Honzik, Marsack, Hayman & Walsh, S.C., Attorneys at Law,
by Mr. Roger Walsh, appearing on behalf of the County.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The Outagamie Professional Police Association having, on October 11, 1979, filed a complaint with the Wisconsin Employment Relations Commission, alleging that Outagamie County had committed prohibited practices within the meaning of Section 111.70(3)(a) of the Municipal Employment Relations Act; and the Commission having appointed Thomas L. Yaeger, a member of its staff, to serve as Examiner and make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.70(5), of the Wisconsin Statutes; and hearing having been scheduled for November 13, 1979, but the parties having agreed to submit the case for decision on the basis of a stipulation of facts that was filed with the Examiner on December 3, 1979; and thereafter the parties having filed briefs with the Examiner on January 25, 1980; and the parties having agreed to file reply briefs within seven days of receipt of exchanged briefs, but none having been received and no extensions sought from the Examiner; and the Examiner having considered the evidence and arguments and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Outagamie County Professional Police Association, hereinafter Association, is an unincorporated labor organization and the voluntarily recognized exclusive bargaining agent for certain employees of the Outagamie County Sheriff's Department, with its offices at Appleton, Wisconsin.

2. That Outagamie County, hereinafter County, is a municipal employer having its offices at 410 Walnut Street, Appleton, Wisconsin.

3. That the Association and County were parties to a collective bargaining agreement (1978-79) that was by its terms to expire on December 31, 1979; that by letter dated July 8, 1979, the Association advised the County of its intention to negotiate changes in the aforesaid collective bargaining agreement; that on July 16, and August 28, 1979, the Association's attorney, Hill, requested the County Personnel Director to provide it with certain information which was relevant and necessary to collective bargaining for changes in and administration of the aforesaid collective bargaining agreement; that on August 31, 1979, the County supplied Hill with the requested data; that on September 4, 1979, the County sent Hill an invoice for \$70 which was a

reasonable "service charge" for costs the County incurred in preparing the information that had been requested; that by letter dated September 7, 1979, Hill informed the County that he was stopping payment on the check issued by his office in payment of said service charge, and he did stop payment on said check; and that to date the Association has not paid said service charge.

4. That on September 18, 1979, Hill requested the County to provide him with additional relevant and necessary information to the commencement of negotiations; that the parties held their first negotiation session on October 1, 1979; that during said meeting the County in good faith advised the Association it would not supply it with any additional information, with certain exceptions discussed at said meeting, until such time as the County is reimbursed for the \$70 costs incurred in meeting earlier requests for information and the Association agrees to assume the costs of supplying the additional information requested; that as of October 11, 1979, when the subject complaint was filed, the Association had not met the aforesaid conditions established by the County and the County had not supplied the requested information; and that on November 16, 1979, the County advised Hill it was cancelling its \$70 invoice for information previously supplied and also outlined the anticipated reasonable cost of supplying the information yet to be furnished.

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

CONCLUSION OF LAW

That the County, acting in good faith, did not refuse to bargain in good faith within the meaning of Section 111.70(1)(d), Stats., when it insisted as a condition of supplying relevant information requested by the Association that the Association incur the reasonable cost to the County in supplying said information, and therefore, did not commit a prohibited practice within the meaning of Section 111.70(3)(a)1 or 4, Stats.

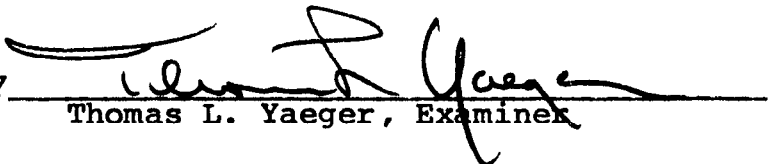
Upon the basis of the foregoing Findings of Fact and Conclusion of Law, the Examiner makes the following

ORDER

IT IS ORDERED that the complaint filed in the instant matter be, and the same hereby is dismissed.

Dated at Madison, Wisconsin this 7th day of April, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Thomas L. Yaeger, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

The Association filed the subject complaint on October 11, 1979, and hearing was scheduled for November 13, 1979. In its complaint the Association alleges that the County by refusing to provide requested information until (1) the Association reimbursed it for the costs incurred in supplying previously requested data and (2) agreed to pay any costs involved with meeting the Association's latest request for information, has interfered with its ability to bargain and constituted a refusal to bargain. However, the day before the scheduled hearing it was postponed. Then on November 16, 1979, the attorney for the County agreed to cancel the \$70 invoice and also gave an estimate of the anticipated costs in supplying the information requested, but not yet furnished. Thereafter on November 28, 1979, the parties agreed to waive hearing on the subject complaint and stipulated to a statement of facts upon which the undersigned is to base his disposition of the matter.

The parties stipulated that all information requested by the Association was relevant and necessary to carrying out its responsibilities for collective bargaining and contract administration. Thus, the dispute centers upon whether the County can condition its compliance with the Association's request for said information upon the latter's agreement to pay the costs attendant with supplying that information. The Association claims that no authority has been advanced in support of the County's position, and further, even if there are "special circumstances under which it is appropriate for the parties to "share" the costs, those circumstances are not present in this case. The Association also believes that if the County were allowed to charge for information it has a duty to provide this would present a serious impediment to and have a chilling effect upon collective bargaining.

The County, however, insists that the Association has in this instance requested considerable information which translates into clerical expense in compiling the data, and therefore, it is only reasonable to expect the Association to bear the costs involved therewith. This has been the rule of law in the private sector where the Union has been required to bear the reasonable expense involved with fulfilling its requests for information. Furthermore, State Statutes (19.21) provides for the cost of "copying" or "duplicating" public records to be born by the individual seeking same. Although the County agrees that said statute may not apply to the information sought herein, it nonetheless reinforces its position that no basis exists for a distinction being made between public and private sector decisional law. It concludes that its request for payment of costs is reasonable and within its legal right.

The Commission has consistently held that a municipal employer, as a function of its duty to bargain in good faith 1/ is obligated to furnish upon request information relevant and necessary to carrying out the union's responsibilities with respect to negotiation and contract administration. 2/ An inquiry into the relevancy of the information

1/ Section 111.70(1)(d), Stats.

2/ City of Green Bay (12302 and 12352-B, C) 1/75; Sheboygan School District (11990-A, B) 1/76; Merton Schools (15155-A) 5/78; Horicon Schools (13765-B) 1/78; Village of Menomonie Falls (15650-C) 2/79; Milwaukee Board of School Directors (15825-B) 6/79; Milwaukee County (17314-A) 2/80.

sought by the Association is unnecessary inasmuch as the County stipulated "the information sought by the Association is relevant and necessary."

Thus, the focus of the undersigned's analysis has been with respect to whether the County by conditioning the provision of said information upon the Association's agreement to assume the County's costs in supplying same constituted a prohibited practice. In this case, the data requested was considerable and the County's charge for costs certainly reasonable and not overly burdensome to the Association. Over the years, unions in the private sector have been required to agree to reasonable arrangements for the compilation of information including costs incurred by the employer in meeting the unions' requests. 3/ Because the Association requested the County to compile certain relevant information to assist it in collective bargaining and contract administration, the County could in good faith require the Union to bear a reasonable charge to cover the costs of gathering and compiling the data. 4/

The Association did not merely request an opportunity to examine County records in order that it could compile or copy the information it sought therein. Consequently, the undersigned is persuaded that the County's demand that the Association pay the cost of gathering and compiling the information was reasonable, made in good faith, and did not constitute a refusal to bargain and prohibited practice within the meaning of Section 111.70(3)(a)1 or 4, Stats. Consequently, the undersigned has ordered the dismissal of the subject complaint of prohibited practice.

Dated at Madison, Wisconsin this 7th day of April, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Thomas L. Yaeger, Examiner

3/ Whitin Machine Works, 108 NLRB 1537 (1954), aff'd 217 F 2d 593 (CA 4, 1954), Tree Fruits Labor Relations Committee, Inc., 121 NLRB 516 (1958); Yahama Frozen Foods, 130 NLRB No. 128 (1961), aff'd CA DC, 1963); United Aircraft Corporation, 192 NLRB 382 (1971) aff'd 90 LRRM 2272 (CA 2, 1975); Curtis-Wright Corp., 193 NLRB 940, 954 (1971); O & F Machine Products Co., 239 NLRB No. 143 (1978).

4/ Note 3, supra.