

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE DISTRICT COUNCIL 48
AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, AFL-CIO
and its affiliated LOCAL 366,

Complainant,

vs.

SEWERAGE COMMISSION OF THE CITY
OF MILWAUKEE,

Respondent.

Case CLXVI
No. 26613 MP-1134
Decision No. 18018-A

Appearances:

Podell, Ugent & Cross, Attorneys at Law, by Mr. Alvin Ugent,
735 West Wisconsin Avenue, Milwaukee, Wisconsin 53233,
on behalf of the Union.

Mr. Jeffrey Bassin, Assistant City Attorney, 200 City Hall,
800 East Wells Street, Milwaukee, Wisconsin 53202, on
behalf of the Commission.

FINDINGS OF FACT, CONCLUSION
OF LAW AND ORDER

AMDEO GRECO, HEARING EXAMINER: Milwaukee District Council, 48 American Federation of State, County and Municipal Employees, AFL-CIO, and its affiliated Local 366, herein the Union, filed the instant complaint on August 1, 1980, with the Wisconsin Employment Relations Commission wherein it alleged that the Sewerage Commission of the City of Milwaukee, herein the Commission, had committed certain prohibited practices under the Municipal Employment Relations Act, herein MERA. On August 14, 1980, the undersigned was appointed by the Wisconsin Employment Relations Commission to make and issue Findings of Fact, Conclusion of Law and Order, as provided for in Section 111.07(5) of the Wisconsin Statutes. Hearing on said matter was held in Milwaukee, Wisconsin, on November 20, 1980. The Commission filed a brief.

Having considered the arguments and the evidence, the Examiner makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. The Union, a labor organization, is the exclusive collective bargaining representative of certain employees employed by the Commission. The Union has its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin, 53208.
2. The Commission, which operates a sewerage facility in Milwaukee, Wisconsin, is a municipal employer and has its principal office at 735 North Water Street, Milwaukee, Wisconsin 53202.
3. The parties are privy to a collective bargaining agreement which provides for binding arbitration.
4. The Commission for many years has provided ferry boat service for employees and visitors between the National Avenue parking lot in Milwaukee and its sewerage treatment plant on Jones Island. When the boat was unavailable, the Commission utilized automotive transportation between the two points. For parts of January 16, 22 and 30, 1980, the ferry boat was unavailable to carry passengers because it was utilized

to take water samples. During those times, no employees needed either automotive or ferry transportation to carry them between the parking lot and Jones Island. If such transportation were needed, the Commission would have provided automotive transportation.

5. The Union thereafter filed grievances which claimed that the Commission had violated the contract by not calling in a boat operator to sit in a van to carry employees during the time that the boat was taking water samples. After they were denied by the Commission, the Union failed to request arbitration over said grievances.

6. Prior to the instant dispute, the parties were involved in two other arbitration cases involving the ferry boat. 1/ Neither or those two cases involved the question posed in the Union's grievances.

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

CONCLUSION OF LAW

The Commission did not violate any provision of MERA when it utilized the ferry boat to take water samples and when it failed to call in a boat operator to operate automotive transportation on the days herein.

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

ORDER

IT IS ORDERED that the Complaint be, and it hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 26th day of February, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Anedeo Greco, Examiner

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1/ Milwaukee Metropolitan Sewerage District, Ellen J. Henningson, (1/1980) and Milwaukee Metropolitan Sewerage District, George Fleischli (1/1975 and 3/1976).

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

The Union's allegations, which claim that the Commission violated Sections 111.70(3)(a)1, 2, 4, and 5 of MERA, are dismissed in their entirety since: (1) there is no basis for finding either a derivative or independent violation of 111.70(3)(a)1; (2) the Section 111.70(3)(a)2 allegation is so patently ludicrous that it does not deserve any comment; (3) the Section 111.70(3)(a)4 allegation is without merit where, as here, the Union failed to make a timely request for arbitration over the alleged breach of contract; and (4) the 111.70(3)(a)5 allegation, which asserts that the Commission's actions were violative of the Fleischli and Henningson arbitration awards noted above, is without foundation because those two awards centered on issues not involved herein. Thus, the Fleischli award only involved the question of whether the Commission could totally discontinue the ferry operation. The Henningson award, in turn, dealt with the Commission's failure to call in a regular boat operator to operate the boat when the boat was in operation. Here, of course, we are not dealing with either of these two situations, but rather, with the separate question of whether the Commission needs to call in an employee to transport employees when the ferry boat is being utilized for other purposes and when no employees in fact need to be transported either to or from Jones Island. Inasmuch as this latter question is different from the issues raised in the above arbitration cases, it follows that the Commission did not refuse to abide by those awards when it engaged in the conduct herein.

Dated at Madison, Wisconsin this 26th day of February, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Amedeo Greco, Examiner

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