

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

No. 18451-A

The statements follow:

The Association supports and commits itself to the implementation of the consultant's study recommendations for the Appleton Police Department, and to the prompt implementation of the recommendations. This support and commitment extends to the entirety of the consultant's recommendations (with the possible exception of a small number of relatively minor recommendations), and specifically includes:

- the recommended manpower staffing level, to be reached through attrition
- the one-to-one car plan, participation in which is understood to be voluntary

The Association consents to numerous, specified agreements directly affecting current labor negotiations, including the withdrawal of 25 bargaining requests and the acceptance of five City bargaining requests, as well as general guidelines affecting the resolution of all unresolved issues.

The Mayor agrees that eight officers will not be laid off to reach the staffing levels recommended by the consultant.

In view of the above agreement, the Association requests the termination of citizen actions in opposition to Police layoffs and withdraws its request for public response to recent advertisements.

4. In November 1977 certain sworn officers who were still functioning as dispatchers received the following memo:

FROM: Captain Leo J. Bosch

RE: Pending Reassignment of Dispatchers

As you know, the management study done in 1975 requires that the position of dispatcher be filled with civilian employees when we reach a manpower level of 79 sworn personnel.

While I cannot tell you precisely when we will reach that level, I do want to remind you that that date is approaching.

When you return to patrol the physical demands of the job will be greater than your present job requires.

I bring this to your attention now so that you can begin the appropriate conditioning program you need to meet the demands of patrol duty. Those of you who have a specific medical problem ought to discuss it with your doctor before you begin your conditioning program.

Any questions or problems with this, see me.

However, no action was taken regarding use of civilian dispatchers during 1977, 1978 or 1979.

5. In mid-1980 Respondent again began active consideration of the use of civilian dispatchers. On or about August 6, 1980 Gorski sent the following memo to the Complainant's President, John Fuhrman:

We are reviewing the various options involved in using civilian, non-sworn personnel as dispatchers. I would like to discuss this issue with the bargaining unit in an effort to explore all areas of potential concern.

I would appreciate it if you would let me know when it might be convenient to meet.

Fuhrman informed Complainant's Board of Director's of the memo's contents and the matter was discussed by the Board. During the late August meeting which followed the foregoing memo, Gorski told Fuhrman that Respondent was going to hire civilian dispatchers and that once civilian dispatchers were hired, the sworn officers who would be displaced would receive patrol responsibilities. Gorski also asked that Fuhrman contact the Teamsters, who represented other civilian employees of Respondent's Police Department, to discuss the question of which labor organization might represent the civilian dispatchers. Complainant's President informed the Chief that there was nothing Complainant could do about the hirings and that Respondent should proceed with same.

6. On December 3, 1980, after public hearings, Respondent's City Council adopted a budget for 1981 which included authorization for the hiring of civilian dispatchers. During a December 22, 1980 collective bargaining session between Complainant and Respondent regarding the terms of a 1981 bargaining agreement, Bill told Complainant's bargaining team that the use of civilian dispatchers would free sworn officers to staff a newly formed tactical unit. On December 28 and December 29, advertisements appeared in the Appleton Post Crescent newspaper soliciting applications for the civilian dispatcher position. Said advertisement was seen by at least one member of Complainant's bargaining team. On December 29, 1980 Complainant and Respondent reached tentative agreement on a 1981 contract. In mid-January 1981 Complainant ratified the new contract and Respondent ratified same shortly thereafter. During bargaining over the 1981 contract, Complainant never demanded bargaining over the decision to hire civilian dispatchers or over the impact of said decision upon the wages, hours and working conditions of the employees it represented.

7. During January 1981 the Respondent hired four civilian dispatchers and in February 1981 the civilians began a training program. On or about January 29, 1981 Respondent's Chief of Police received the following letter from Complainant's President:

This letter is to inform you that if the city goes ahead with it's plans to sub-contract work that is normally done by sworn police officers, to private citizens, they are committing an unfair labor practice.

The Appleton Professional Policeman's Association is prepared to take whatever action is necessary to prevent this action.

Shortly after receipt of the foregoing letter the Chief met with Complainant's President, asked what Complainant's concerns were and told Complainant that Respondent was willing to bargain but needed to know what Complainant was interested in proposing. Complainant's President indicated that he didn't have any specific proposals but would discuss the matter with Complainant's Board of Directors. The Chief informed Complainant's President that Respondent intended to proceed with the use of civilian dispatchers. On February 5, 1981 the Wisconsin Employment Relations Commission received the instant complaint. On February 17 the Chief and representatives of Complainant met and discussed the situation. During that meeting Complainant requested certain information regarding the wages, hours and working conditions which would apply to the dispatchers. Respondent supplied that information several days later.

8. Respondent has never refused a request from Complainant to bargain the impact of the decision to employ civilian dispatchers.

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

CONCLUSIONS OF LAW

1. By failing to make a timely demand for bargaining over Respondent City of Appleton's decision to employ civilian dispatchers, Complainant Appleton Professional Policemen's Association waived any right it may have had to bargain over said decision, and thus Respondent City of Appleton did not commit a prohibited practice within the meaning of Section 111.70(3)(a)4 of MERA.

2. As Respondent City of Appleton has never refused to bargain with Complainant Appleton Professional Policemen's Association over the impact of the decision to employ civilian dispatchers, Respondent City of Appleton has not committed a prohibited practice within the meaning of Section 111.70(3)(a)4 of MERA.

3. By employing civilian dispatchers and establishing wages, hours and working conditions for said employees which differ in some respects from those of the employees represented by Complainant Appleton Professional Policemen's Association, Respondent City of Appleton has not committed a prohibited practice within the meaning of Section 111.70(3)(a)3 of MERA.

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

ORDER

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

Dated at Madison, Wisconsin this 15th day of September, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Peter G. Davis, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

Complainant alleges that Respondent has committed prohibited practices within the meaning of Section 111.70(3)(a)4 of MERA by refusing to bargain over the decision to employ civilian dispatchers as well as over the impact of said decision upon the wages, hours and working conditions of the employees it represents. 1/ Complainant further alleges that Respondent's actions violate Section 111.70(3)(a)3 of MERA. Respondent denies Complainant's allegations.

Decision to Employ Civilian Dispatchers

The record clearly demonstrates that at least since 1975 the Respondent had been contemplating the use of civilian dispatchers. While both the passage of time between the 1975 management study and the 1980 decision to use civilians and the general terms of the press release prevent the undersigned from accepting Respondent's argument that the 1975 press release represents an enforceable agreement by Complainant allowing Respondent to hire civilian dispatchers, the record does support a finding that Complainant was aware of the possibility that at some time civilian dispatchers would be employed. Gorski's August 6 memo and subsequent meeting with Fuhrman, Complainant's President, transformed this general awareness into notice that a decision was being made to employ civilian dispatchers who would displace the sworn officers performing that function. Complainant argues that the Gorski memo and ensuing discussion with Fuhrman merely alerted Complainant to the possibility that civilian dispatchers would be hired. This argument has been rejected for several reasons. Fuhrman admits Gorski told him that once civilian dispatchers were hired, the sworn officers displaced by the civilians would return to patrol duty. Fuhrman also admits that Gorski asked him to contact the Teamsters to discuss union representation of the civilians. Even if the foregoing had constituted the entire conversation, one would be hard pressed to conclude that notice of the decision had not been given. However, Gorski credibly testified that during their conversation Fuhrman stated Respondent should proceed with the hirings and that Complainant couldn't do anything to stop same. Fuhrman testified that he did tell Gorski that there was nothing Complainant could do to stop the hirings and that it was "possible" that he told Gorski that the Respondent should proceed. These additional components of the conversation remove any doubt that Complainant received notice of the decision to employ civilian dispatchers during the foregoing conversation. Indeed, Fuhrman's statements border on an agreement between the parties that Complainant had no interest in bargaining over the decision to employ civilian dispatchers. In any event, in mid-August 1980 Complainant was or should have been aware of Respondent's decision. Having received notice, it then became incumbent upon Complainant to make a timely demand for bargaining over said decision if it wished to discuss the matter with Respondent. 2/ The record demonstrates that such a demand was never made.

1/ During an extended on the record discussion with the Examiner, Complainant appeared to limit its allegations to the impact of the decision in question. However as both the complaint and the parties' briefs also focus upon the duty to bargain the decision itself, the undersigned is satisfied that said issue is appropriately before him for resolution.

2/ City of Appleton (17034-D) 5/80; Drummond Integrated School District (15909-A,B) 3/78; New Richmond Joint School District (15172-A,B) 5/78.

Instead, while Respondent adopted a budget authorizing the hiring of the civilians, mentioned the subject in passing during bargaining and advertised for applicants, Complainant sat silently at the bargaining table, reached a tentative agreement, and ratified same. Assuming arguendo that the decision in question is a mandatory subject of bargaining, Complainant's failure to demand bargaining over the subject during the parties negotiations over a new contract constitutes a clear and unmistakable waiver of any right it had to bargain over the decision. 3/

Impact of the Decision to Employ Civilian Dispatchers

The decision to employ civilian dispatchers impacts upon the wages, hours and working conditions of the employees represented by Complainant and thus Respondent, upon receiving a timely demand, had an obligation to bargain over said subject. Assuming arguendo that Complainant's silence during negotiations did not also waive its right to demand bargaining over the impact of the decision and assuming arguendo that the January 29 memo to Gorski constitutes a demand for bargaining, it is clear that Respondent has always been willing to and has in fact bargained with Complainant over the impact issue. Finding himself in agreement with Complainant's President who testified that Respondent had never refused to bargain impact, the Examiner has dismissed this allegation.

Allegation of Discrimination

The undersigned is unaware of any valid theory under which Respondent's conduct could even remotely be viewed as violative of Section 111.70(3)(a)3 of MERA. 4/ The establishment of wages, hours and working conditions for the civilian dispatchers which may differ in some respects from those of the displaced sworn employees simply isn't violative of statutory provision quoted below.

Dated at Madison, Wisconsin this 15th day of September, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Peter G. Davis, Examiner

3/ It is noteworthy that even if one were to erroneously construe Complainant's January 29 letter to Gorski as a timely demand for bargaining over the decision, the record is devoid of evidence that Respondent ever attempted to limit the scope of the discussion which the January 29 letter precipitated and thus it could well be concluded the Respondent was willing to and did in fact bargain over the decision.

4/ Section 111.70(3)(a)3 of MERA states:

It is a prohibited practice for a municipal employer, individually or in concert with others:

. . .

3. To encourage or discourage a membership in any labor organization by discriminating in regard to hiring, tenure or other terms or conditions of employment; but the prohibition shall not apply to a fair share agreement.