

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :

SAUK COUNTY :

Requesting a Declaratory Ruling
Pursuant to Sec. 111.70(4)(b) of the
Municipal Employment Relations Act,
Involving a Dispute Between :

SAUK COUNTY and TEAMSTERS LOCAL 695 :

Case XXVII
No. 25808 DR(M)-145
Decision No. 18565

Appearances:

DeWitt, Sundby, Huggett & Schumacher, S.C. by Mr. Robert M. Hesslink, Jr., 121 South Pinckney Street, Madison, Wisconsin 53703, appearing on behalf of Sauk County.

Goldberg, Previant, Uelmen, Gratz, Miller, Levy & Brueggeman, S.C. by Ms. Marianne Goldstein Robbins, 788 North Jefferson Street, P.O. Box 92099, Milwaukee, Wisconsin 53202, appearing on behalf of Teamsters Union Local 695.

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECLARATORY RULING AND ORDER

Sauk County, having on February 25, 1980 filed a petition requesting the Wisconsin Employment Relations Commission to issue a declaratory ruling, pursuant to Sec. 111.70(4)(b) of the Municipal Employment Relations Act, to determine whether a matter arising in collective bargaining between said County and Teamsters Union Local 695 during the pendency of a mediation-arbitration investigation 1/ involved a mandatory or non-mandatory subject of bargaining; and hearing in the matter having been conducted by the members of the Commission on April 29 and May 9, 1980 at Baraboo, Wisconsin; and the parties having filed briefs by August 14, 1980; and the Commission, having considered the evidence and arguments of Counsel and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Sauk County, hereinafter referred to as the County, is a municipal employer and has its offices at the Courthouse, Baraboo, Wisconsin.

2. That Teamsters Union Local 695, hereinafter referred to as the Union, is a labor organization and has its offices at 1314 North Stoughton Road, Madison, Wisconsin; and that on April 12, 1977, following an election conducted by it, the Wisconsin Employment Relations Commission certified the Union as the exclusive collective bargaining representative of the following employees of the County:

All employees of the Sauk County Courthouse, and clerical employees of the Sauk County Highway Department, excluding supervisory, professional, confidential and craft employees and law enforcement employees with the power of arrest.

1/ Case XXV.

3. That in the above relationship the Union and the County were parties to a collective bargaining agreement covering the wages, hours and working conditions of the employees in the above described collective bargaining unit, which by its terms became effective January 1, 1978 and continued in effect to December 31, 1979; and that said agreement contained, among its provisions, the following:

ARTICLE III - RECOGNITION

Section 1. The County of Sauk hereby agrees to recognize Teamsters Union Local No. 695 as the sole and exclusive collective bargaining representative for hours, wages and other conditions of employment pursuant to the certification of the Wisconsin Employment Relations Commission for the following employees:

All employees of the Sauk County Courthouse, and clerical employees of the Sauk County Highway Department, excluding supervisory, professional, confidential and craft employees, and law enforcement employees with the power of arrest.

4. That in the latter part of 1979 the parties commenced negotiations on a successor collective bargaining agreement for the employees in the above described bargaining unit; that in said regard the parties became deadlocked in said negotiations; that, as a result, on January 2, 1980 the Union filed a petition with the Commission initiating a mediation-arbitration proceeding with respect to an alleged deadlock arising in said negotiations; that during the course of the investigation conducted by a member of the Commission's staff to determine whether, in fact, a deadlock did exist, and to obtain the final offers of the parties with respect to the matters in issue, the County, as it had during the course of said negotiations, during the course of said investigation, in response to the Union's proposal that the successor collective bargaining agreement contain the identical "RECOGNITION" provision, took the position that said provision be deleted from the successor agreement, for the reason that said provision did not relate to "wages, hours and working conditions", and that, therefore the County had no mandatory duty to collectively bargain with the Union with respect to said provision; and that on February 25, 1980 the County filed a petition initiating the instant declaratory ruling proceeding requesting the Commission to determine whether said provision related to a mandatory or non-mandatory subject of bargaining.

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

CONCLUSIONS OF LAW

1. That all employees in the employ of Sauk County employed in the County Courthouse, and clerical employees of the Sauk County Highway Department, excluding supervisory, professional, confidential and craft employees and law enforcement employees with the power of arrest, constitute an appropriate collective bargaining unit within the meaning of Sec. 111.70(1)(e) of the Municipal Employment Relations Act.

2. That Teamsters Union Local 695, at all times material herein, has been and is the certified exclusive collective bargaining representative, within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act, of the employees in the collective bargaining unit set forth in para. 1, supra.

3. That the proposal of Sauk County not to incorporate a provision setting forth that Teamsters Local 695 is the exclusive collective bargaining representative of the employees of Sauk County employed in the collective bargaining unit described in para. 1, supra. in a new collective bargaining agreement covering the wages, hours and working conditions of the employees in said unit, constitutes neither a mandatory, nor a permissive, nor a prohibited subject of bargaining within the meaning of Sec. 111.70(1)(d) of the Municipal Employment Relations Act; but that however said statutory provision, as well as Sec. 111.70(3)(a)4 of the Municipal Employment Relations Act, contemplates that Sauk County, upon the request of Teamsters Local 695 must include a provision in any new collective bargaining agreement between the parties describing the bargaining unit represented by Teamsters Local 695, and only when such provision includes a statement to the effect that said provision is set forth merely to describe the bargaining representative and the bargaining unit covered by the terms of said collective bargaining agreement, and is not to be interpreted for any other purpose.

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

DECLARATORY RULING AND ORDER

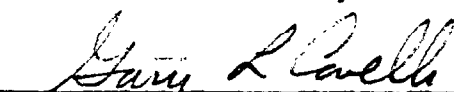
1. That Sauk County, upon the request of Teamsters Local 695, must include a recognition clause in the new collective bargaining agreement existing between Sauk County and Teamsters Local 695, covering the wages, hours and working conditions of the employees in the appropriate collective bargaining unit involved herein, provided said recognition clause includes a statement to the effect that said provision is set forth merely to describe the bargaining representative and the bargaining unit covered by the terms of said collective bargaining agreement, and is not to be interpreted for any other purpose.

Given under our hands and seal at the
City of Madison, Wisconsin this 27th
day of March, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECLARATORY RULING AND ORDER

This instant declaratory ruling proceeding is but one of five cases presently pending before the Commission involving Sauk County, Teamsters Local 695 and the unit of employees involved herein. On January 2, 1980 the Union filed a petition requesting the Commission to initiate a mediation-arbitration proceeding to resolve an alleged impasse arising in collective bargaining between the parties in negotiations leading to a collective bargaining agreement to succeed the agreement which expired on December 31, 1979. Prior to the close of the investigation in the mediation-arbitration case (Case XXV) the County, on February 14, 1980, filed a petition requesting the Commission to clarify the unit involved by determining whether certain positions previously included in the unit should be excluded therefrom for various reasons. (Case XIII) On February 25, 1980 the County filed its petition initiating the instant declaratory ruling proceeding. On March 17, 1980 the Union filed a complaint alleging that the County violated its duty to bargain collectively with the Union in violation of the Municipal Employment Relations Act (MERA) by proposing to not incorporate the "Recognition" provision in the successor collective bargaining agreement. (Case XXVIII) Finally, on April 21, 1980 the County filed a complaint alleging that the Union committed a prohibited practice within the meaning of MERA by filing its complaint in bad faith, as a means to harass the County, and to impede and delay the negotiations of the successor agreement, and to delay the mediation-arbitration proceeding. (Case XXIX) The Commission consolidated the instant proceeding with the unit clarification and complaint proceedings for the purposes of hearing. We are also today disposing of the complaint proceedings.

While the County argues that its proposal not to incorporate the recognition provision in the new collective bargaining agreement does not pertain to wages, hours and working conditions, it contends that it may properly so propose in negotiations leading to that agreement. It contends that its motives are not frivolous, but premised on the desire to avoid, through the grievance and arbitration provisions in said agreement, determinations by arbitrators with respect to unit clarifications and determinations by arbitrators with respect to bargaining unit work.

The County avers that the Commission has the exclusive statutory authority to establish appropriate collective bargaining units, and therefore such authority extends to clarification of such units. The County also contends that the recognition clause does not relate to wages, hours and working conditions, and therefore is not a mandatory subject of bargaining, and in support thereof excerpts a statement set forth by the Supreme Court of the United States in NLRB v. Wooster Division of Borg Warner Corp. 2/ to the effect that "The recognition clause likewise does not come within the definition of mandatory bargaining".

The Union asserts that the inclusion of the recognition clause in the collective bargaining agreement is a subject which primarily relates to wages, hours and working conditions, and further, that its ability to enforce the provisions in the agreement would be affected in the absence of such a provision in the agreement. The Union also cites the Borg Warner case in support of its argument

2/ 356 U.S. 342 (1958), 42 LRRM 2034.

that the County's proposal not to include such a provision in the agreement constitutes an evasion of its duty to collectively bargain with the Union.

The fact that a collective bargaining agreement provides for the final and binding determination of disputes arising between the parties with respect to the interpretation or application of the terms of the agreement does not grant the grievance arbitrator exclusive jurisdiction to determine issues relating to the collective bargaining unit described in the contractual recognition clause. Even where there exists a final and binding arbitration provision in the agreement and where the issue concerns itself with the unit description, the Commission will entertain a unit clarification petition, since the Commission has the statutory authority to determine appropriate bargaining units. Where an arbitration proceeding has commenced with respect to a dispute regarding the unit, the Commission will normally permit the arbitration proceeding to continue, ^{3/} and, however, if either party is of the opinion that the award is not consistent with Commission policy, that party may initiate a unit clarification with the Commission, and during that proceeding the Commission may determine that the award does not conform with the Commission's policies, and therefore the award would not be binding upon the parties. We would prefer that the parties not proceed to arbitration on such issues, but proceed directly to the Commission for a unit clarification.

In response to concerns that grievance arbitrators might interpret the recognition clause to relate to issues beyond the identity of the unit, our determination herein, specifically with regard to the additional language to be inserted in the provision, remedies that concern.

While the issue herein is one of first impression for the Commission, the Supreme Court of the United States, in reviewing a decision of the National Labor Relations Board, had the opportunity to determine such issue, along with others in the Borg Warner case. Therein the employer insisted that the recognition provision to be included in the collective bargaining agreement exclude the identity of the International Union which had been certified as the exclusive bargaining representative, and that the affiliated Local Union, which had not been so certified, be substituted and described in the collective bargaining agreement. The NLRB held that the employer's insistence in said regard constituted a refusal to bargain in violation of the National Labor Relations Act. In sustaining the NLRB's determination the Court stated, in part, the following:

Since it is lawful to insist upon matters within the scope of mandatory bargaining and unlawful to insist upon matters without the issue here is whether . . . the "recognition" clause is a subject within the phrase "wages, hours, and other terms and conditions of employment" which defines mandatory bargaining.

. . .

The "recognition" clause . . . does not come within the definition of mandatory bargaining. The statute requires the company to bargain with the certified representative of its employees. It is an evasion of that duty to insist that the certified agent not be a party to the collective bargaining contract. The Act does not prohibit the voluntary addition of a party, but that does not authorize the employer to exclude the certified representative from the contract.

3/ Stoughton Area School District, (15995) 12/77.

We see no distinction in proposing to delete the identity of the certified bargaining representative and the proposal to not incorporate the description of the certified bargaining unit from the collective bargaining agreement in determining whether such action by an employer violates its statutory duty to bargain.

The fact that the County's proposal is intended to be included in its "final offer" for the purpose of mediation-arbitration does not remove such proposal from the realm of "insistence" set forth in the above decision. We would apply the same rationale had either party herein proposed that the collective bargaining agreement omit the identities of the municipal employer or the bargaining agent, or the identity of the individuals executing said agreement on behalf of the County and the Union.

Therefore, we have concluded that the County's proposal not to include the description of the certified appropriate collective bargaining unit, set forth in the "Recognition" clause constitutes an evasion of its statutory duty to bargain with the Union, and therefore the County cannot validly include such a proposal in its final offer for the purposes of mediation-arbitration.


Sec. 111.70(4)(b) of MERA provides that a declaratory ruling issued by the Commission with respect to the duty of a party to bargain on any subject shall have the effect of an order issued by the Commission with respect to proceedings involving a prohibited practice complaint, and therefore we see no need to reiterate our decision and Order herein in the complaint proceedings initiated by both parties. Therefore we are dismissing said complaints.

Dated at Madison, Wisconsin this 27th day of March, 1981

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Gary L. Covelli, Commissioner

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