

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

Case XXVIII
No. 25885 MP-1086
Decision No. 18570

Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Local 695 having, on March 17, 1980, filed a complaint with the Wisconsin Employment Relations Commission, wherein it alleged that Sauk County, by refusing to include a proposed "recognition clause" in a successor collective bargaining agreement with Local 695, had refused, and continued to refuse, to bargain in good faith in violation of Section 111.70(3)(a)1 and 4 of the Municipal Employment Relations Act; and Sauk County having, on April 21, 1980, filed an answer and cross complaint wherein it alleged that Local 695, by filing such complaint, had also refused to bargain in good faith in violation of Section 111.70(3)(b)3 of the Municipal Employment Relations Act; and the Commission having, on April 29 and May 9, 1980, held a consolidated hearing on said complaint and cross complaint, along with two other proceedings, including a petition for declaratory ruling, 1/ which had previously been filed by Sauk County, wherein it sought a determination as to whether the recognition clause, which is involved in the instant proceeding, relates to a mandatory or permissive subject of bargaining; and the Commission having, on March 27, 1981, issued its Findings of Fact, Conclusions of Law and Declaratory Ruling and Order in the latter proceeding, 2/ wherein it found that a properly worded recognition clause was neither a mandatory nor a permissive, nor a prohibited subject of bargaining, but that Sauk County had a legal obligation to include a properly worded recognition clause in its collective bargaining agreement with Local 695, upon request, and wherein the Commission ordered Sauk County to so include such a clause, if so requested, by Local 695; and the Commission being satisfied that its decision in the declaratory ruling proceeding resolves the issues raised in the instant complaint proceeding;

NOW, THEREFORE, it is

That the complaint filed by Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Local 695, and the

2/ Decision No. 18565.

cross complaint filed by Sauk County be, and the same hereby are,
dismissed.

Given under our hands and seal at the
City of Madison, Wisconsin this 1st
day of April, 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
ORDER OF DISMISSAL

In this complaint proceeding Local 695 alleged that the County, during negotiations on a new collective bargaining agreement, covering Courthouse employees in the employ of the County, had refused, and continued to refuse, to bargain collectively with Local 695 in violation of Section 111.70(3)(a)1 and 4 of MERA by refusing to include in the new agreement "a recognition clause by which it agrees to recognize Teamsters Local 695 as the sole and exclusive collective bargaining representative" of the unit represented by Local 695. The County filed an answer and cross complaint. It denied that its conduct violated MERA, and further alleged that the complaint filed by Local 695 was filed as a means to harass the County and to impede and delay negotiations, thus constituting a refusal to bargain in good faith in violation of Section 111.70(3)(b)3 of MERA.

Previously the County had filed, with the Commission, its declaratory ruling petition, as well as a petition to clarify the bargaining unit involved. All cases were consolidated for the purpose of hearing. On March 27, 1981, the Commission issued its declaratory ruling in the matter wherein it concluded, among other things, that the County's proposal not to incorporate the recognition clause in the new collective bargaining agreement was neither a mandatory, nor a permissive, nor a prohibited subject of bargaining within the meaning of MERA, but that the pertinent provisions of MERA contemplate that the County, upon request of 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."

Section 111.70(4)(b) states as follows:

"Failure to bargain. Whenever a dispute arises between a municipal employer and a union of its employees concerning the duty to bargain on any subject, the dispute shall be resolved by the commission on petition for a declaratory ruling. The decision of the commission shall be issued within 15 days of submission and shall have the effect of an order issued under s. 111.07. The filing of a petition under this paragraph shall not prevent the inclusion of the same allegations in a complaint involving prohibited practices in which it is alleged that the failure to bargain on the subjects of the declaratory ruling is part of a series of acts or pattern of conduct prohibited by this subchapter."

Said statutory provision establishes that an order issued in a declaratory ruling proceeding has the same effect as an order issued in a prohibited practice proceeding. Further, the provision sets forth that the fact that a petition for declaratory ruling has been filed does not prevent the filing of a complaint alleging a refusal to bargain in good faith on the subject involved in the declaratory ruling proceeding. Therefore, Local 695 had a right to file the complaint herein, and it necessarily follows that the County also had the right to file its cross complaint, both covering the same subject matter.

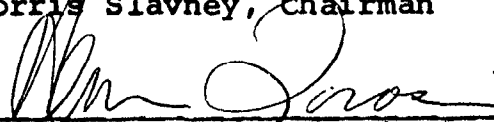
We deem that our order issued in the declaratory ruling proceeding adequately disposes of the issues in the declaratory ruling and complaint proceedings, to the extent that the complaint proceeding is "mooted" as a result of our order issued in the declaratory ruling proceeding, and therefore, we have dismissed the complaint and cross complaint.


Dated at Madison, Wisconsin this 1st day of April, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner