STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	
RUSK COUNTY	Case XXV No. 27433 DR(M)-163 Decision No. 18593
Requesting a Declaratory Ruling Pursuant to Section 111.70(4)(b), Wis. Stats., Involving a Dispute Between Said Petitioner and	
RUSK COUNTY SHERIFF'S DEPARTMENT EMPLOYEES, TEAMSTERS UNION, LOCAL 662	

Appearances:

Mulcahy & Wherry, S.C., Attorneys and Counselors at Law, by Mr. Stephen L. Weld, 409 Barstow Street, P.O. Box 347, Eau Claire, Wisconsin 54701, appearing on behalf of the Petitioner.

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

FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

Rusk County having, on January 29, 1981, 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 and determine whether a proposal, made by Teamsters Local 662 in collective bargaining with Rusk County, concerning the maintenance of standards relates to a mandatory or non-mandatory subject of bargaining; and the parties having waived hearing in the matter and having filed briefs in support of their various positions by February 23, 1981; and the Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Rusk County, hereinafter referred to as the County, is a municipal employer, which among its functions maintains and operates a Sheriff's Department; and that the County has its primary offices at Ladysmith, Wisconsin.

2. That Teamsters Union Local 662, hereinafter referred to as the Union, is a labor organization and has its offices at Eau Claire, Wisconsin; and that at all times material herein the Union has been and is the certified collective bargaining representative of all full-time non-supervisory deputy sheriffs in the employ of the County.

3. That some time prior to January 29, 1981 the Union and the County were engaged in negotiations leading to a collective bargaining agreement to succeed an agreement which normally would have expired on December 31, 1980, covering the wages, hours and conditions of employment of the non-supervisory deputy sheriffs in the employ of the County; that the Union, during the course of said negotiations, proposed that the following provision which had been contained in the 1979-1980 collective bargaining agreement be incorporated in the new agreement:

MAINTENANCE OF STANDARDS

Section 1. The employer agrees that all conditions of employment in his individual operation, relating to wages, hours of work, overtime differentials and general working conditions, shall be maintained at not less than the highest standards in effect at the time of the signing of this agreement, and the conditions of employment shall be improved wherever specific provisions for improvements are made elsewhere in this Agreement. Any disagreement between the local Union and the employer, with respect for this matter, shall be subject to the grievance procedure.

This provision does not give the employer the right to impose or continue wages, hours and working conditions less than those contained in this contract.

4. That during the course of said negotiations the County maintained that the above provision relates to a non-mandatory subject of bargaining, on the claim that it relates to the formulation and management of public policy; and that to the contrary, the Union has contended that it pertains primarily to wages, hours and conditions of employment and therefore the provision relates to a mandatory subject of bargaining.

5. That on January 29, 1981 the County filed a petition, initiating the instant proceeding, requesting the Wisconsin Employment Relations Commission to issue a declaratory ruling determining said issue existing between the parties.

6. That a portion of the above provision could be interpreted as a limitation on the right of the County to determine and establish the level and quality of the services rendered by it in the operation of its Sheriff's Department, and that, therefore, any portion of the provision which relates to wages, hours and conditions of employment arising as a result of the implementation of non-mandatory subjects of bargaining primarily relates to the formulation or management of public policy, rather than primarily relating to wages, hours and working conditions.

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

CONCLUSION OF LAW

1. That a portion of the provision, in issue herein, contained in the proposal of the Union, primarily relates to a non-mandatory subject of bargaining within the meaning of Sec. 111.70(1)(d) of the Municipal Employment Relations Act.

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

DECLARATORY RULING

1. That Rusk County has no duty to bargain collectively with Teamsters Union Local 662, within the meaning of Sec. 111.70(3)(a)4

of the Municipal Employment Relations Act, with respect to the Maintenance of Standards provision as proposed by the Union to be included in a new collective bargaining agreement between the parties.

Given under our hands and seal at the City of Madison, Wisconsin this 10th day of April, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Herman Torosian, Commissioner

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Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

During the course of bargaining over the terms of a successor collective bargaining agreement the County contended that the "Maintenance of Standards" provision previously contained in the expiring collective bargaining agreement between the parties, and proposed, by the Union, to be included in the successor agreement, related to a non-mandatory subject of bargaining, and that therefore the County had no duty to bargain with the Union with respect to said proposal. The Union took an opposing view, and the County filed the instant petition requesting the Commission to issue a declaratory ruling and determine whether the proposal relates to a mandatory or non-mandatory subject of collective bargaining. The parties waived hearing in the matter and filed briefs in support of their respective positions.

The County asserts that the provision in issue usurps the exclusive grant of authority granted to the County, pursuant to Chapter 59, Stats., to manage the property and the affairs of the County, and thus said provision would prohibit the County from making any management decision which would have an impact on wages, hours, and/or working conditions of the deputies represented by the Union, without violating the collective bargaining agreement involved. It also contends that the provision subjects each management decision to the contractual grievance procedure, thus running afoul of Chapter 59's grant of authority to the County Board. The County also maintains that the provision prevents it from engaging in activity over which it has no mandatory duty to bargain. The County claims that the provision would have a "chilling" effect upon the County's ability to determine its level of services, and thus relates to a non-mandatory subject of bargaining.

The Union counters by arguing that the provision in issue clearly relates to wages, hours and conditions of employment, and therefore that the County is required to bargain thereon. It claims not to seek to control matters fundamentally related to governmental or managerial policies. The Union denies that the provision impermissibly usurps the County's authority under either Chapter 59 or Sec. 111.70(1)(d). It argues that the terms of any collective bargaining agreement inevitably impact upon management's ability to make managerial decisions, and that if municipal employers had the right to make such decisions without any limitations, there would be no collective bargaining agreements. The Union also contends that the arguments by the County have already been considered and rejected by the Commission in previous cases, 1/ and that the provision involved herein relates to a mandatory subject of bargaining.

It should be noted that in making its determination herein the Commission is considering solely the "Maintenance of Standards" provision contained in one of the Union's proposals, since the parties did not submit any other provision which will be incorporated in the successor collective bargaining agreement which will be ultimately entered into between the parties.

1/ City of Wauwatosa (15917) 11/77; City of Waukesha (17830) 5/80.

Factors to be considered by the Commission and the courts regarding the distinction between mandatory and non-mandatory subjects of bargaining have been set forth by our Supreme Court in Unified School District of Racine County v. WERC, 2/ as follows:

> The question is whether a particular decision is primarily related to the wages, hours and conditions of employment of the employes, or whether it is primarily related to the formulation or management of public policy. Where the governmental or policy dimensions of a decision predominate, the matter is properly reserved to decision by the representatives of the people.

In the City of Waukesha, cited herein by both parties, the Commission was confronted with the question of whether the following language was a mandatory subject of bargaining:

> The City will not unilaterally change any benefit or condition of employment which is mandatorily bargainable and heretofore enjoyed by a majority of unit employes . . .

In that case the Commission was confronted with arguments strikingly similar to those presented herein and responded in the following manner:

> The Association's proposal on its face is limited to matters which are mandatory subjects of bargaining. The City's principal argument, however, is that the clause would preclude it from taking action on non-mandatory subjects, such as work rules, that impact on or affect "benefits" and "conditions of employment" and bargain about the effects thereafter.
>
> We have previously held that an employer is not prohibited from implementing a matter relating to a permissive subject of bargaining even though it would result in a change in the impact thereof, which impact is a mandatory subject of bargaining if the latter is not covered by the agreement. Certainly the City cannot change any benefit or condition of employment established in the agreement, nor does the Association have any duty to bargain during the term of the agreement concerning changes in express contractual provisions. Notwithstanding the foregoing, we do not believe that the disputed proposal bars the City from taking action on permissive subjects. It does not, as the City suggests, reserve the right to negotiate during the term of the agreement with respect to permissive subjects of bargaining not included in the collective bargaining agreement.
>
> The determination as to whether a particular matter relates to a mandatory subject of bargaining is generally subject to the jurisdiction of the Commission and such issues are not determined by arbitrators.
>
> Furthermore, we consider the City's argument that the Union's proposal states a test contrary to be without merit. The purpose of the Union's language . . . is not to propose a test for determining what subjects are mandatory subjects of bargaining, but rather, states what mandatorily bargainable benefits or conditions of employment

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2/ 81 Wis. 2d 89, 102 (1977).

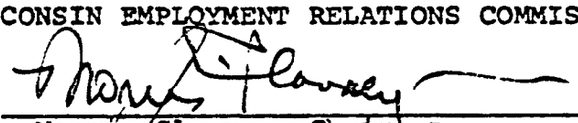
the City cannot unilaterally change during the term of the agreement. Stated differently, the language provides that where a majority of the employes enjoy a benefit or condition of employment which is mandatorily bargainable, said benefit or condition of employment cannot be unilaterally changed by the City. Conversely, if a mandatorily bargainable benefit or condition of employment is not enjoyed by a majority of employes, then the City can change same.

Thus, we conclude that the Association's proposal relates to a mandatory subject of bargaining, and therefore it may be included in the Association's final offer for the purpose of mediation-arbitration.

In this proceeding the proposal involved is deemed by the Commission to be more restrictive on the County than the provision resulting in our ruling in the Waukesha case. The first sentence of the instant provision, as worded, is not limited to only mandatory subjects of bargaining, but also applies to non-mandatory subjects of bargaining, where the impact thereof affects, wages, hours and/or working conditions. For example, assume that the County, in determining the level of services it desires to provide to the residents of the County, determines to reduce the number of deputies on duty between the hours of 12 midnight to 8:00 a.m., which would cause a resultant layoff of certain personnel, thus affecting the conditions of employment of the personnel suffering such layoff. Even though the County would have a duty to bargain the impact of the implementation of such a decision on the wages, hours and working conditions of the deputies in the bargaining unit, the literal reading of the first sentence of the Union's proposal could be interpreted as prohibiting the County from implementing such decision without violating the collective bargaining agreement. The key distinction between the provision in issue herein and the provision involved in Waukesha is that in the latter case the language in issue related only to maintaining wages, hours and working conditions resulting from mandatory subjects of bargaining. We therefore conclude that the first sentence of the proposal, as worded, relates to a non-mandatory subject of bargaining.

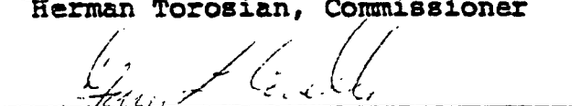
Dated at Madison, Wisconsin this 10th day of April, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 

Morris Slavney, Chairman

Herman Torosian, Commissioner



Gary L. Covelli, Commissioner

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