

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

No. 18741

## ARTICLE 30

### DURATION AND TERMINATION

Section 1. THIS AGREEMENT shall be in full force and effect from \_\_\_\_\_, TO AND INCLUDING December 31, 1980, and shall continue in full force and effect from year to year thereafter unless written notice of desire to cancel or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to date of expiration.

Section 2. It is further provided that where no such cancellation or termination notice is served and the parties desire to continue said Agreement, but also desire to negotiate changes or revisions in this Agreement, either party may serve upon the other a notice at least sixty (60) days prior to December 31, 1980, or December 31st of any subsequent Contract Year advising that such party desires to continue this Agreement, but also desires to revise or change terms or conditions of such Agreement.

Section 3. Revisions agreed upon or ordered shall be effective as of \_\_\_\_\_, or \_\_\_\_\_ of any subsequent Contract Year. The respective parties shall be permitted all legal or economic recourse to support their request for revisions if the parties fail to agree thereon.

Section 4. The Employer and the Union shall commence negotiations at least one hundred twenty (120) days prior to expiration date of the Agreement and shall submit the Proposal within thirty (30) days following such meeting.

5. That the Union's Business Agent, Robert Stein, met with members of the law enforcement bargaining unit in Prescott, Wisconsin on September 8, 1980, for the purpose of developing bargaining proposals intended to be included in the collective bargaining agreement between the Union and the City for the year 1981; and that on September 23, 1980 Stein sent the following letter to the Mayor of the City, which letter was received the following day:

As provided for in the Union Agreement, and in compliance with the Labor-Management Act of 1947, the Union is hereby serving the required sixty (60) day notice of its desire to continue our Agreement, but also to open our Agreement for the purpose of negotiating changes or revisions in wages, hours and working conditions.

Please take notice that representatives of Joint Council No. 39 of the International Brotherhood of Teamsters have been designated by this Local Union to assist in negotiating the terms and conditions of the new Agreement and may serve as members of the bargaining committee. No new Agreement may be accepted [sic] by this Local Union without the approval of Joint Council No. 39.

We are ready to meet with you at any time convenient for the purpose of negotiating these changes or revisions. Enclosed is the Union's Proposal.

6. That on November 6, 1980 Stein met with John McGirl, the City's negotiator, in Eau Claire, Wisconsin, and again on December 11, 1980, in Hudson, Wisconsin, for the purpose of negotiating modifications in the agreement covering the law enforcement personnel; that said meetings were from two to three hours in duration; and that said individuals were the only persons present at said meetings.

7. That on December 11, 1980, following the bargaining session in Hudson, Stein met with members of the law enforcement unit to discuss the results of the bargaining session held on that date; that said meeting was attended by a majority of the members of the law enforcement unit, who determined that the City's counteroffers were unacceptable; that Stein informed such personnel that the City would not agree to a proposal of the Union relating to insurance, and that Stein indicated that the Union's chances in obtaining their demands in interest arbitration were good; and that at said meeting no member of the bargaining unit voiced any objection to the Union's intent to initiate an interest arbitration proceeding with respect to the negotiations then in progress.

8. That on December 22, 1980, the Union filed a petition requesting the Wisconsin Employment Relations Commission to initiate a final and binding arbitration proceeding, pursuant to Sec. 111.77 of the Municipal Employment Relations Act, wherein the Union alleged that the Union and the City had reached an impasse in their collective bargaining with respect to wages, hours and working conditions affecting law enforcement personnel, including matron, in the employ of the City; that following the filing of same the Commission designated one of its staff members to investigate the alleged impasse and make his report to the Commission; that said Investigator, with the concurrence of the parties, set a meeting for February 5, 1981 at Hudson, Wisconsin, for the purpose of the conduct of his investigation in the matter; and that however said meeting was not conducted as a result of the filing of the instant petition by the Petitioner, on January 19, 1981.

9. That in his petition the Petitioner requests the Commission to conduct another election among the law enforcement officers and matron in the employ of the City to determine whether they desire to continue to be represented for the purposes of collective bargaining by the Union; that the petition was supported by at least 30% of the employees in said collective bargaining unit, which at the time of the filing of the petition consisted of four employees.

10. That neither the Union nor the City served notice to terminate or cancel the collective bargaining agreement involved herein, but to the contrary, and pursuant to Article 30 of said agreement, the Union timely notified the City, by its notice dated September 23, 1980, that it desired to continue the agreement and also negotiate certain modifications therein; and therefore it is apparent that the instant election petition was filed after said notice, as well as subsequent to the filing of the interest arbitration petition by the Union.

11. That while the Petitioner and the Union have expressed conflicting positions with respect to whether the petition for the election has been "timely" filed, the City has expressed no position with respect to that issue, but has indicated that it is willing to fulfill its statutory obligations in the matter.

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

#### CONCLUSION OF LAW

That there does not presently exist a question of representation, within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act, among law enforcement officers, including matron, in the employ of the police department of the City of Prescott, inasmuch as the petition filed herein, on January 19, 1981, by David F. Hoffman, seeking an election among such employees to determine whether they desire to continue to be represented, for the purposes of collective bargaining by General Teamsters Union Local 662, was not timely filed.

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

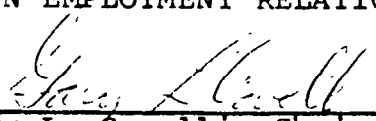
ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and the same hereby is, dismissed.

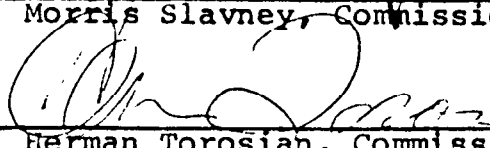
Given under our hands and seal at the  
City of Madison, Wisconsin this 5th  
day of June, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
\_\_\_\_\_  
Gary L. Covelli, Chairman

  
\_\_\_\_\_  
Morris Slavney, Commissioner

  
\_\_\_\_\_  
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF  
LAW AND ORDER DISMISSING PETITION FOR AN ELECTION

Background:

The Union, as the certified collective bargaining representative of law enforcement personnel, including matron, in the employ of the City, and the City are parties to a collective bargaining agreement covering the wages, hours and working conditions of said employees. Under the provisions of that agreement either party could, by giving at least 60 days' notice, either terminate said agreement as of December 31, 1980, or indicate a desire to continue said agreement, and at the same time indicate an intent to seek to revise or change certain terms or conditions of said agreement. On September 8, 1980 the Union notified the City that it desired to continue the agreement and at the same time desired to negotiate certain changes therein. Thereafter a Union representative met with the employees in the unit with respect to possible modifications in the agreement, and the Union representative also met with a representative of the City in an attempt to negotiate and agree upon such changes sought by the Union. No such agreement was reached, and on December 22, 1980, the Union filed a petition with the Commission seeking to initiate a final and binding arbitration proceeding. Following the filing of the petition, a staff member of the Commission scheduled an investigatory meeting in the matter for February 5, 1981. However, prior to the latter date, and on January 19, 1981, the Petitioner, a law enforcement officer in the employ of the City, filed the instant petition, wherein he requested that the Commission conduct an election among the employees in the bargaining unit involved to determine whether they desired to continue to be represented by the Union.

The Union contends that the instant petition was untimely filed and therefore should be dismissed. It claims that the existing collective bargaining agreement between it and the City is a bar to a present election, and further, that the pending interest arbitration proceeding also is a bar to a present election, since the petition seeking the election was filed subsequent to the filing of the interest arbitration petition.

The Petitioner contends that the agreement between the City and Teamsters expired on December 31, 1980, and further, that the interest arbitration proceeding is invalid, due to the means by which the Union determined to commence such a proceeding.

The City indicated that it will bargain with any duly certified collective bargaining representative selected by its employees.

The Commission must determine herein whether the instant petition was timely filed in order to obtain an election among the employees involved. The Petitioner correctly notes that the Municipal Employment Relations Act (MERA) grants municipal employees the right to bargain collectively through representatives of their own choosing, and that said statutory enactment also recognizes that employees have the right to refrain from such concerted activity. It is to be noted that Section 111.70(4)(d)5, of MERA sets forth that the fact that an election has been held among employees in a bargaining unit does not preclude the holding of another election among the same employees "if it appears to the Commission that sufficient reason for another election exists." Thus, in order to effectuate the policies and purposes of MERA, we have, in the early years of the administration of MERA, adopted and applied a policy indicating that the rights of employees to select or reject a bargaining representative must be weighed against the need to encourage stability in an existing collective bargaining relationship. 1/ Therefore, we must consider whether the

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1/ City of Milwaukee (8622) 7/68; Wauwatosa Board of Education (8300-A) 2/68.

alleged existing collective bargaining agreement between Teamsters and the City constitutes a bar to a present election and also whether the pending interest arbitration proceeding also constitutes such a bar.

In a recent decision involving Dunn County 2/ the Commission reaffirmed our long-standing policy to the effect that:

Where there exists a collective bargaining agreement a petition requesting an election among the employees covered by said agreement must be filed within the 60 day period prior to the date reflected in said agreement for the commencement of negotiations on a succeeding agreement.

The rationale regarding the underlying purpose of this policy was set forth in our decision in Durand Unified Schools: 3/

The contract bar policy was established by the Commission for the purpose of encouraging stability in an established bargaining relationship by postponing, but not preventing elections for the purpose of changing or eliminating the bargaining representative during the term of the existing bargaining agreement.

As indicated above, the Union, on September 24, 1980, served notice on the City that it desired to continue the collective bargaining agreement, and at the same time desired to negotiate certain changes therein.

We have long held that where, as here, a collective bargaining agreement, by its terms, automatically renews itself on a year-to-year basis, absent timely notice by one of the parties that it wishes to terminate the agreement, that such an agreement continues in force and will constitute a bar to an election. 4/ We have also held that where, as here, such an agreement contains separate and specific provisions for terminating and modifying the agreement, and one of the parties serves notice that it wishes to negotiate modifications in the agreement, that such notice will not forestall the automatic renewal of the agreement. 5/

We conclude from the foregoing that the Union's notice that it wished to continue the agreement and negotiate modifications therein did not forestall automatic renewal of the parties' agreement. Since it is renewed on a year to year basis from December 31 to December 31, and the parties have the opportunity to either terminate or modify the agreement in each year by giving proper notice, the agreement is not extended indefinitely.

Petitioner argues that since the parties failed to commence negotiations at least 120 days prior to December 31, as required by Article 30, Section 4, the agreement expired on December 31, 1980. There is no basis for Petitioner's argument, since Article 30, Section 4 pertains only to the date by which the parties are to commence negotiations and is not relevant as to the termination or continuation of the agreement.

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2/ Decision No. 17861, 6/80. This policy was first established by the Commission in Wauwatosa Board of Education and later redefined in our decision in City of Milwaukee, Ibid.

3/ Decision No. 13552, 4/75.

4/ Wauwatosa Board of Education, supra 1/; Brandes Company (4337) 8/56; Sunshine Dairy (3320) 12/52.

5/ Oak Creek-Franklin School District No. 1 (14027-B) 12/77.

Therefore, we conclude that the parties' 1980 agreement was continued for another year subject to negotiated changes. Since the instant election petition was not filed until January 19, 1981, the continued agreement constitutes a bar to the filing of the election petition. Article 30, Section 4, of the agreement is relevant to the determination of the "window period," i.e., the 60 day period during which an election petition may be timely filed during the term of an existing collective bargaining agreement, as set forth in our decision in City of Milwaukee, supra. In this case the "window period" would be the 60 days preceding the date 120 days prior to December 31, i.e. July 5 through September 2.

While we have concluded that the existing agreement bars a present election, we wish to discuss the effect of an election petition filed during the pendency of an interest arbitration proceeding where the previously existing collective bargaining agreement has expired.

In Dunn County, previously cited herein, involving a mediation-arbitration proceeding, we stated:

As a general rule the Commission will not process an election petition filed after the normal expiration of a collective bargaining agreement where such petition is filed on a date subsequent to the filing of a petition for mediation-arbitration involving the same collective bargaining unit.

This rule is consistent with our prior decisions where we found an election petition to be untimely when it was filed after the expiration of an agreement, but during the pendency of a fact finding proceeding, 6/ for if the Commission were to process an election petition and direct an election prior to granting the parties involved in a fact finding proceeding the opportunity to enter into a collective bargaining agreement after good faith bargaining and the fact finding proceeding "such action by the Commission would have the effect of mutilating, if not destroying fact finding procedures as a means of resolving impasses in collective bargaining in municipal employment."

The same reasoning applies to a mediation-arbitration proceeding, as well as to a final and binding interest arbitration proceeding involving law enforcement personnel, pursuant to Section 111.77, MERA. The reasoning has even stronger application in the case of mediation-arbitration or interest arbitration, since once the proceedings are begun a resulting collective bargaining agreement is much more imminent than it is in a fact finding proceeding. To permit employees or a competing union to oust, or attempt to oust, the incumbent bargaining representative during the pendency of an interest arbitration proceeding would discourage collective bargaining and would not create or maintain the type of stability desirable in the collective bargaining relationship.

Petitioner claims that, since the Union did not conduct a referendum among the members of the bargaining unit on its decision to petition for interest arbitration, the filing of the interest arbitration petition should not bar the subsequently filed election petition. Petitioner bases his argument on the fact that the Union previously held a ratification vote among the members of the bargaining unit on the City's offer for a 1980 agreement, but did not submit the City's offer on the proposed changes for 1981 to such a vote before petitioning for interest arbitration.

Petitioner's argument relates to the Union's internal rules and procedures and there is nothing in the record to indicate that the

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6/ LaCrosse County (12931) 8/74; City of Milwaukee (9477) 1/70; City of Milwaukee (9172) 7/69.


latter violated its internal procedures by not submitting the City's offer, which its Business Agent, Stein, considered unacceptable, to a formal vote of the bargaining unit's membership. There is, however, evidence in the record which shows that Stein did discuss the City's offer with the members of the bargaining unit at a meeting with them on December 11, 1980, subsequent to Stein's meeting with the City's negotiator on the same day. At that meeting the members indicated informally to Stein that they rejected the City's offer as unsatisfactory, and no member objected when Stein recommended interest arbitration as the course of action to take.

In other words, there is no evidence in the record upon which we can conclude that, due to the means by which the Union arrived at its decision to petition for interest arbitration, the arbitration petition is invalid. Therefore we conclude that the pending interest arbitration proceeding also bars the conduct of a present election.

Dated at Madison, Wisconsin this 5th day of June, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
\_\_\_\_\_  
Gary L. Covelli, Chairman

  
\_\_\_\_\_  
Morris Slavney, Commissioner

  
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Herman Torosian, Commissioner