

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
CITY OF CUDAHY (FIRE DEPT.)
For Final and Binding Arbitration
Between Said Petitioner and
LOCAL 1801, INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS

Case XL
No. 28865 MIA-608
Decision No. 19375-B

Appearances:

Mulcahy & Wherry, S.C., Attorneys at Law, 815 East Mason Street, Suite 1600,
Milwaukee, Wisconsin 53202-4080, by Mr. Robert W. Mulcahy, on behalf of
the City.
Lawton & Cates, Attorneys at Law, 110 East Main Street, Madison, Wisconsin
53703-3354, by Mr. Richard V. Graylow, on behalf of the Union.

ORDER DENYING MOTION FOR SUBSTITUTION OF ARBITRATOR

On February 5, 1982, the Wisconsin Employment Relations Commission furnished the City of Cudahy and Local 1801 with a panel of arbitrators from which they were to select an arbitrator to issue a final and binding award pursuant to Sec. 111.77, Stats. to resolve an impasse arising in collective bargaining between the parties on matters affecting wages, hours and conditions of employment of certain non-supervisory firefighting personnel in the employ of the City of Cudahy (Fire Dept.). The parties subsequently notified the Commission that they had selected Arbitrator William W. Petrie from said list to issue such an award, and on February 19, 1982, the Commission issued an order appointing Arbitrator Petrie to issue an award pursuant to Sec. 111.77(4)(b), Stats. Following hearings, Arbitrator Petrie issued such an award on February 9, 1983 wherein he selected the final offer of Local 1801. The City subsequently petitioned the Circuit Court to vacate the award and on July 25, 1983, Circuit Court Judge Harold B. Jackson, Jr. issued an order granting the City's motion to vacate on the grounds that the arbitrator exceeded his power so that a mutual, final and definite award was not made. Judge Jackson's order remanded the matter to Arbitrator Petrie "for rehearing of the issues involved in this case." The City filed a motion for substitution of arbitrator with the Commission on September 23, 1983 asserting that Arbitrator Petrie has demonstrated evident partiality and has exceeded his power so that a mutual, final and definite award has not been made; and that the most expedient and proper way in which to proceed is to substitute for Arbitrator Petrie with an impartial and disinterested party. Local 1801 responded to that motion on September 29, 1983 and urged the Commission to deny same. Having considered the parties' positions, the Commission has concluded that the motion should be denied.

NOW, THEREFORE, it is

ORDERED

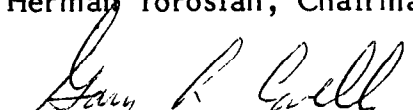
That the motion for substitution of arbitrator is hereby denied.


Given under our hands and seal at the City of
Madison, Wisconsin this 3rd day of October, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING ORDER DENYING
MOTION FOR SUBSTITUTION OF ARBITRATOR

In support of its motion, the City takes the position that by virtue of his prior involvement and action in this matter, Arbitrator Petrie cannot be a disinterested and impartial arbitrator and therefore its motion should be granted. It argues that the remand of this arbitration to Arbitrator Petrie raises significant questions as to the appearance of the existence of bias, prejudice, or partiality. Therefore the City argues that the Commission should grant its motion so that the reasonable expectations of the parties, that they may receive a hearing before a disinterested arbitrator, can be met. The City contends that while there is not presumption of dishonesty or lack of integrity as to arbitrators, the arbitration process must be carefully guarded against any unacceptable risk of bias or potential contamination of impartial decision-making. It asserts that given Arbitrator Petrie's previous award in this matter, it is likely that he may be so committed to his findings in the award that he would, consciously or unconsciously, find it difficult to consider any substantive change of position in a subsequent hearing and award. The City therefore requests that its motion be granted.

In response to the City's motion, Local 1801 initially argues that the Commission lacks jurisdiction over this dispute as the matter is currently subject to Judge Jackson's explicit order remanding the proceedings to Arbitrator Petrie. It contends that nothing in Sec. 111.77, Stats. or ERB 30 authorizes the filing of what amounts to an Affidavit of Prejudice under these facts, especially at this late date. Should the Commission conclude that it has jurisdiction, Local 1801 argues that under these facts and circumstances the Commission should defer to the court whose jurisdiction has already been invoked by the parties. Local 1801 asserts that the City's conclusionary allegations as to Arbitrator Petrie's partiality should be disregarded inasmuch as he never was, nor is, "prejudiced." Local 1801 therefore requests that the City's motion be denied forthwith.

We have considered the City's motion and concluded that it should be denied.

Sec. 111.77(7), Stats. authorizes resort to Chapter 788 by a party seeking judicial review of an interest arbitrator's award issued pursuant to Section 111.77, Stats. Utilizing this statutorily established procedure, the City sought and obtained a judicial order vacating Arbitrator Petrie's award. The Judge's order specifically states that the ". . . matter is remanded back to the arbitrator, William Petrie, for rehearing for the issues involved in this case." Indeed, the Union asserts that the City had specifically urged the Judge to remand the matter to Wisconsin Employment Relations Commission for appointment of a different arbitrator.

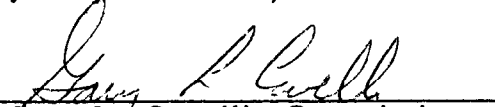
As the agency charged with the administration of the statute under which Arbitrator Petrie acquired his jurisdiction, we clearly have a strong interest in ensuring that the parties receive awards from competent impartial arbitrators. Where, as here, a party challenges the impartiality of an arbitrator we have appointed under Sec. 111.77, we believe that we are not without statutory authority to rule upon that challenge. In the above-noted circumstances however, we do not find it appropriate to exercise our jurisdiction in the manner proposed by the City. Therefore, we have denied the City's motion.


Dated at Madison, Wisconsin this 3rd day of October, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner