STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	
CITY OF SHEBOYGAN	Case XLIII No. 27721 DR(M)-170 Decision No. 19421
Requesting a Declaratory Ruling Pursuant to Section 111.70(4)(b), Wis. Stats., Involving a Dispute Between Said Petitioner and	
LOCAL 483, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO	

Appearances

Lindner, Honzik, Marsack, Hayman & Walsh, S.C., Attorneys at Law, by Mr. Roger E. Walsh, 700 North Water Street, Milwaukee, Wisconsin 53202, for the City.

Mr. Leroy Waite, Representative, International Association of Firefighters, AFL-CIO, 1600 East Ridge Road, Beloit, Wisconsin 53511, for the Union.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECLARATORY RULING

City of Sheboygan having, on March 30, 1981 filed a petition requesting the Wisconsin Employment Relations Commission to issue a Declaratory Ruling to determine whether certain proposals advanced by Local 483, International Association of Firefighters, AFL-CIO, in collective bargaining with the City on wages, hours and working conditions of non-supervisory firefighters, relate to mandatory subjects of bargaining within the meaning of the Municipal Employment Relations Act; and hearing in the matter having been conducted on May 4, 1981 at Sheboygan, Wisconsin, before William C. Houlihan, a member of the Commission's staff, and briefs and reply briefs having been filed by the parties by October 7, 1981; and the Commission, having reviewed the record and briefs of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That the City of Sheboygan, hereinafter referred to as the City, is a municipal employer, having its principal offices at 828 Center Avenue, Sheboygan, Wisconsin 53081; and that the City, among its functions, maintains and operates a Fire Department, wherein it employs various non-supervisory firefighting personnel.

2. That Local 483, International Association of Firefighters, AFL-CIO, hereinafter referred to as the Association, is a labor organization having its offices at 2236 Wedemayer Avenue, Sheboygan, Wisconsin 53081; that at all times material herein the Association has been, and is, the certified collective bargaining representative of all non-supervisory firefighting personnel in the employ of the Fire Department of the City; and that in said relationship the Association and the City, for the past number of years, have entered into successive collective bargaining agreements covering the wages, hours and working conditions of said personnel.

3. That in the fall of 1980 the City and the Association engaged in negotiations in efforts to reach an accord on a successor collective bargaining agreement; that in said regard the parties, on September 22, 1980 agreed on the following ground rule:

> Complete written proposals from both parties will be submitted by the second meeting. Each party reserves the

right to amend, add, add to, or withdraw proposals at any time.

4. That also on or about October 30, 1980, the Association advised the City that it desired to negotiate a procedure relating to promotions in the Fire Department.

5. That on December 17, 1980 the Association filed a petition requesting the Wisconsin Employment Relations Commission to initiate a final and binding interest arbitration proceeding, pursuant to Sec. 111.77 of the Municipal Employment Relations Act, to resolve an alleged impasse existing between the Association and the City in their collective bargaining on the successor agreement; that thereafter the Commission designated one of its staff members to conduct an investigation in the matter to determine whether, in fact, the parties were at impasse in their negotiations; that in said regard said Investigator met with the parties on February 3 and March 19, 1981, during which meetings said Investigator attempted to mediate the issues involved; that, however, the parties did not, in said investigation, reach an accord on a successor collective bargaining agreement; and that during the course of said investigation the Association proposed, among others, that the following changes be incorporated in the successor agreement.

Article VIII(a) - Promotions and Transfers

(a) Whenever a permanent vacancy occurs in a job classification or a new job classification is established in a department, such vacancy or new job classification shall be filled by the applicant with the greatest department seniority provided such employee by reason of ability, skill and efficiency is qualified therefore by written and oral examination and whatever procedure is presently in effect and in accordance with the laws of the State of Wisconsin. If the vacancy or new job classification is not filled in accordance with the above procedure, it shall be filled by the applicant with the greatest City seniority, provided such employee, by reason of ability, skill and efficiency is qualified therefore. To determine which senior employee meets the minimum qualifications, such vacancy or new job classification shall be posted on the Association bulletin board for ten (10) days.

Article XXIV(a) - Duration

(a) This Agreement shall be effective when signed by both parties and shall remain in full force and effect until its expiration date, December 18, 1981 or until a successor agreement is signed.

6. That also during the course of said investigation the Association proposed to enlarge Article XXI by incorporating the following proposal therein:

(h) The Union reserves the right to install and maintain a bulletin board in all fire stations. Bulletin boards shall be installed in a non-public area of each fire station.

7. That on March 30, 1980 the City initiated the instant proceeding by filing a petition with the Commission requesting a declaratory ruling to determine whether:

(a) The proposals relating to promotions and bulletin boards, which were submitted by the Association after the filing of its petition for final and binding arbitration, were timely proposed within the meaning of the Municipal Employment Relations Act, and

(b) The proposal of the Association relating to promotions and transfers, and the duration proposal, particularly that portion relating specifically to the phrase "or until a successor agreement is signed", and the proposal with respect to the bulletin board, relate to mandatory subjects of bargaining.

8. That the City, contrary to the Association, contends, that the proposals relating to promotions and the bulletin board were not timely made, and that in any event all three Association proposals related to permissive or prohibited subjects of bargaining.

9. That the proceeding initiated by the filing of the petition for final and binding arbitration is still pending before the Commission; and that the investigation in said matter has not been closed, but is, in fact, pending as a result of the instant declaratory ruling proceeding.

10. That the Association's proposal with respect to promotions and transfers, as written, relates in part to City positions, the occupants of which are not represented by the Association for the purposes of collective bargaining on wages, hours and working conditions.

11. That the Association's proposal with respect to the installation and maintenance of bulletin boards in the Fire Department, for use by the Association, does not primarily relate to the management and direction of the Fire Department of the City, but primarily relates to the Association's role as the collective bargaining representative of the non-supervisory firefighting personnel in the employ of the City, with respect to their wages, hours and working conditions.

12. That the Association's duration proposal could extend the term of a collective bargaining agreement beyond three years.

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

CONCLUSIONS OF LAW

1. That, since Sec. 111.77(4)(b) of the Municipal Employment Relations Act permits either a municipal employer, or the organization representing non-supervisory firefighting personnel of said municipal employer, to amend final offers, in a proceeding requesting final and binding arbitration of an impasse in collective bargaining, prior to the close of the investigation, the proposals submitted by Local 483, International Association of Firefighters, AFL-CIO, after it had filed its petition for such final and binding arbitration, but prior to the close of the investigation therein, were timely filed within the meaning of Sec. 111.77 of the Municipal Employment Relations Act.

2. That, inasmuch as Local 483, International Association of Firefighters, AFL-CIO, as the collective bargaining representative of non-supervisory firefighters in the employ of the Fire Department of the City of Sheboygan, has no authority to bargain collectively on behalf of any other employes of the City of Sheboygan, and since the City of Sheboygan has no duty to bargain with said labor organization on behalf of employes other than said non-supervisory firefighting personnel, para. (a) of Article VIII relating to promotions and transfers, proposed by Local 483, International Association of Firefighters, AFL-CIO, to be included in a successor collective bargaining agreement with the City of Sheboygan, relates to a non-mandatory subject of bargaining within the meaning of Sec. 111.70(1)(d) of the Municipal Employment Relations Act.

3. That the proposal of Local 483, International Association of Firefighters, AFL-CIO, with respect to the installation and maintenance of bulletin boards for use by the Association in the performance of its role as the exclusive collective bargaining representative of non-supervisory firefighters in the employ of the City of Sheboygan, relates to a mandatory subject of bargaining within the meaning of Sec. 111.70(1)(d) of the Municipal Employment Relations Act.

4. That, inasmuch as the proposal of Local 483, International Association of Firefighters, AFL-CIO, with respect to the duration of the successor collective bargaining agreement between it and the City of Sheboygan could extend said collective bargaining agreement to a term of more than three years duration, said proposal, as written, is contrary to Sec. 111.70(3)(a)4 of the Municipal Employment Relations Act, and therefore said proposal 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 Conclusions of Law, the Commission makes and issues the following

DECLARATORY RULING

1. That the City of Sheboygan has no duty to bargain collectively with Local 483, International Association of Firefighters, AFL-CIO, within the meaning of Sec. 111.70(3)(a)4 of the Municipal Employment Relations Act, with respect to:

a. Local 483's proposal relating to promotions and transfers, which Local 483 would include in subpara. (a), Article VII of the successor collective bargaining agreement between the parties.

b. Local 483's proposal relating to the duration of the successor collective bargaining agreement between the parties.

2. That the City of Sheboygan has the duty to bargain collectively with Local 483, International Association of Firefighters, AFL-CIO, within the meaning of Sec. 111.70(3)(a)4 of the Municipal Employment Relations Act, with respect to the proposal of Local 483 relating to the installation and maintenance of bulletin boards for use of Local 483 in the performance of its role as the exclusive collective bargaining representative of the non-supervisory firefighters in the employ of the City of Sheboygan.

Given under our hands and seal at the City of Madison, Wisconsin this 2nd day of March, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Gary L. Covelli, Chairman

_____
Morris Slavney, Commissioner

_____
Herman Torosian, Commissioner

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

The Commission, in the instant proceeding, has been requested to issue a declaratory ruling to determine issues arising with respect to three proposals submitted by Local 483 in its negotiations with the City on a successor collective bargaining agreement setting forth wages, hours and working conditions of non-supervisory firefighters in the employ of the City. Said proposals, the facts surrounding their submission to the City, and the basic positions of the parties are set forth in the Findings of Fact. Following the close of the hearing, the parties filed briefs in support of their positions.

The City's Position

The City argues that the proposals relating to promotions and the bulletin board were untimely filed, and therefore cannot be included in any "final offer" in a final and binding arbitration proceeding initiated pursuant to Sec. 111.77 of the Municipal Employment Relations Act (MERA). In support of said position the City relies upon our Supreme Court's decision in Milwaukee County Deputy Sheriff's Association v. Milwaukee County 1/ for the proposition that neither party can make new proposals after a petition for interest arbitration, pursuant to Sec. 111.77, has been filed. In that regard it contends that Local 483's latest proposal with regard to promotions, which was submitted following the filing of the petition for arbitration, differed significantly from the promotion proposal made in bargaining prior to the filing of that petition. It also emphasizes that the bulletin board proposal was first submitted following the filing of the arbitration petition.

The City also contends that the three proposals of Local 483 in issue herein do not relate to mandatory subjects of bargaining within the meaning of the provisions of MERA. It argues that since the promotion proposal affects positions occupied by individuals in the employ of the City which are not encompassed in the collective bargaining unit represented by Local 483, said Local has no authority to bargain same, and in support thereof the City cites the Commission's decision rendered in the City of Green Bay. 2/ Similarly the City contends that the bulletin board proposal is a non-mandatory subject of bargaining, claiming that it relates to the City's management of its facilities, a permissive subject of bargaining under Blackhawk VTAE District. 3/ Finally, it asserts that the duration proposal is unlawful since it would extend the successor collective bargaining agreement for a period of more than three years duration, thus in violation of the prohibition set forth in Sec. 111.70(3)(a)4 of MERA. 4/ The City points out that the Commission in Dunn County 5/ ruled that such an indefinite extension provision could not bar an election to determine bargaining representatives, assertively demonstrating the Commission's disapproval of indefinite extensions, and further, the City cites Village of West Milwaukee (Fire), 6/ wherein the Commission concluded that an indefinite extension provision could not properly be included in a final offer in a final and binding arbitration proceeding.

1/ 64 Wis 2d 6/51 (1974)

2/ Dec. No. 12402-B, 1/75.

3/ Dec. No. 16640-A, 9/80.

4/ . . . The term of any collective bargaining agreement shall not exceed 3 years.

5/ Dec. No. 17861-B, 6/80.

6/ Dec. No. 17917-A, 9/80.

The Position of Local 483

Local 483 contends that its promotion and bulletin board proposals were timely submitted for the purposes of the final and binding arbitration proceeding. It points out that its promotion proposal was listed in its October 30 letter outlining its demands, and that said proposal was discussed during negotiations on October 30 and November 13. It also argues that the "ground-rules" agreed upon during negotiations permit either party to "amend, add to, or withdraw proposals at any time".

Local 483 further asserts that its three proposals in issue herein relate to mandatory subjects of bargaining. It cites United States Pipe and Foundry Co. v. NLRB 7/ in support of its duration proposal. It argues that our Supreme Court decision in Glendale Professional Policeman's Association v. City of Glendale 8/ supports the conclusion that its promotion proposal relates to a mandatory subject of bargaining, and that the Commission's decision in Blackhawk VTAE, previously cited herein, should be applied in determining whether its bulletin board proposal relates to a mandatory subject of bargaining.

Local 483 claims that its promotion proposal was never intended to apply to employes or positions outside the collective bargaining unit represented by it, and that its duration proposal can be interpreted to conform to the statutory duration requirement.

The "Timeliness" Issue

With respect to the issue as to whether the proposals submitted by Local 483 were timely filed, we are of the opinion that the decision rendered by our Supreme Court in Milwaukee County is no longer applicable as a result of an amendment to Sec. 111.77(4)(b) of MERA, which became effective May 21, 1976, more than one year following the issuance of that decision by the Court. Prior to such statutory amendment said section of the statute read as follows:

> (4) There shall be 2 alternative forms of arbitration:
>
> . . .
>
> (b) Form 2. Parties shall submit their final offer in effect at the time that the petition for final and binding arbitration was filed. Either party may amend its final offer within 5 days of the date of the hearing. The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

The Court in the Milwaukee County case held that the Association representing law enforcement personnel in the employ of the County could not properly "amend" its final offer by submitting a proposal that had not been the subject of negotiations prior to the filing of the petition for final and binding arbitration.

The amendment to Sec. 111.77(4)(b) reads as follows:

> (4) There shall be 2 alternative forms of arbitration:
>
> . . .
>
> (b) Form 2. * * * The commission shall appoint an investigator to determine the nature of the impasse. The commission's investigator shall advise the commission in writing, transmitting copies of such advise to the parties of each issue which is known to be in dispute. Such advice shall also set forth the final offer of each party as it is known to the investigator at the time that the investigation is closed.

7/ 298 Fed 2d 873, 1962.

8/ 83 Wis 2d 90, 1978.

> Neither party may amend its final offer thereafter, except with the written agreement of the other party. The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

Said provision prohibits the amendment of final offers only after the close of the investigation, unless, of course, both parties agree otherwise. There is no prohibition with respect to amendments prior to the close of such investigation. The statutory mandate which existed prior to the statutory amendment, that final offers reflect offers in effect at the time the petition has been filed, has been eliminated. To hold otherwise would hamper the Commission's investigator in his efforts to persuade the parties to reach a negotiated settlement without proceeding to third party interest arbitration.

It is apparent that the Legislature recognized such previous limitation on the role of the investigator and thus amended the statutory provision. Therefore, since the investigation had not as yet been closed at the time Local 483 made its proposals relating to promotions and the bulletin board, the Commission concludes that said proposals were timely submitted and may be included in the final offer of Local 483, if we should conclude that they relate to mandatory subjects of bargaining.

The Promotion Proposal

While the promotion proposal is identical to the proposal considered by our Supreme Court in the Glendale case, that court case did not involve the issue as to whether said proposal related to a mandatory subject of bargaining, but rather whether said proposal could be harmonized with the Police Chief's statutory powers in making a promotion within the bargaining unit represented by the Glendale Professional Policeman's Association. Here, the City specifically objects to the proposed provision on the claim that it relates to individuals in the employ of the City who are not occupying positions in the bargaining unit represented by Local 483. As it is readily apparent that Local 483 has no authority to bargain with respect to wages, hours and conditions of employment for positions outside the bargaining unit, the City's objection is meritorious. If Local 483 intends its proposal to apply only to bargaining unit vacancies or new positions therein, it can easily amend its proposal to so reflect that intent.

The Proposal Relating to the Union Bulletin Board

We are not persuaded by the City's argument that the installation of a union bulletin board relates to the City's management of its facilities, or in any other way primarily relates to the management and operation of the City's fire fighting facilities and capabilities. Such a bulletin board would be utilized for posting items such as notices relating to departmental job openings, union meetings and grievance meetings with management personnel pursuant to the contractual grievance procedure, all of which relate to wages, hours and working conditions. Thus, we conclude that such a bulletin board proposal primarily relates to Local 483's authority and responsibility as the exclusive collective bargaining representative of the non-supervisory firefighters in the employ of the City and relates to a mandatory subject of bargaining.

The Duration Proposal

The Commission has previously been called upon to determine the effect and/or nature of duration clauses in collective bargaining agreements covering municipal employes. In City of Wauwatosa 9/the following provision was involved:

> This Agreement shall . . . remain in full force and effect to and including, December 31, 1976 and thereafter shall be considered automatically renewed for successive twelve month periods unless procedures are instituted in

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9/ Dec. No. 15917, 11/77.

accordance with Section 111.77 of the Wisconsin Statutes. * * * In the event the parties do not reach written agreement by the expiration date, the existing Agreement shall be extended until a new agrement is executed.

The Commission therein concluded that the provision was not permissive, but mandatory, since it merely continued the effective date of the agreement for successive twelve month periods until a new agreement was executed. The Commission also concluded that the duration provision did not prevent the City from claiming that certain provision in said agreement related to permissive subjects of bargaining should the parties go to final and binding arbitration. In that case the statutory three year limitation on length of any collective bargaining agreement was not raised by the parties nor considered by the Commission.

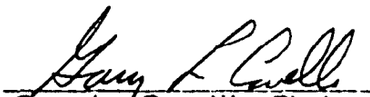
In analyzing the duration language in question, it is readily apparent that said language provides for an indefinite duration by providing that the agreement would stay in effect ". . . until a successor agreement is reached". The Union does not really take issue with same and concedes that the term of any collective bargaining agreement cannot exceed three years, but argues that if negotiations proceed a full year beyond the term of a two-year contract "the proposal must simply be interpreted in such a manner as to conform with the three year limit imposed by the statute".

The Commission's role, however, in declaratory ruling cases is to determine whether the proposal being challenged as written is a mandatory or non-mandatory subject of bargaining. Clearly the proposal here as written does not limit the term of the agreement to three years (or less) as required by law. It could by its terms exceed three years depending on the original term of the agreement and the length of time it takes the parties to reach a successor agreement. Since MERA prohibits collective bargaining agreements which are for a term of more than three years, we have concluded that the instant proposal relates to a non-mandatory subject of bargaining.

By our decision we are in no way precluding the Union from proposing language which would continue the agreement until a successor agreement is reached, as long as said proposal specifies that the agreement cannot exceed the statutory three year limit.

Dated at Madison, Wisconsin this 2nd day of March, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner