

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XXXII
No. 28486 DR(M)-197
Decision No. 19717

Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. Robert Mulcahy, 815 East Mason Street, Milwaukee, Wisconsin 53202, for the Municipal Employer. Podell, Ugent and Cross, S.C., Attorneys at Law, by Ms. Nola Hitchcock Cross, 207 East Michigan Street, Milwaukee, Wisconsin 53202, for the Union.

The City of Glendale having filed a petition, and an amended petition, requesting the Wisconsin Employment Relations Commission to issue a Declaratory Ruling as to whether it had the duty to bargain collectively within the meaning of the Municipal Employment Relations Act with respect to its desire to exclude a provision existing in a 1981-1982 collective bargaining agreement between it and District Council 48, AFSCME, AFL-CIO and its affiliated Local 1261 from the successor to said existing agreement, and said Union having filed a motion to dismiss said petitions, contending that they were prematurely filed, and further having filed a statement in opposition to said petitions; and the parties having waived hearing in the matter and having stipulated to the facts pertinent to the issues involved, and having filed briefs by February 8, 1982; and the Commission being fully advised in the premises, makes and issues the following

1. That the City of Glendale, hereinafter referred to as the City, is a municipal employer, having its principal offices at 5909 North Milwaukee River Parkway, Glendale, Wisconsin 53209; and that among its municipal functions the City maintains and operates a Fire Department.

2. That District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO and its affiliated Local 1261, hereinafter referred to as the Union, is a labor organization and has its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin 53208.

3. That at all times material herein the Union has been, and is, the certified collective bargaining representative of employees of the City employed in its Department of Public Works, City Hall clericals and Police Dispatchers; that in said relationship the Union and the City are parties to a collective bargaining agreement covering the wages, hours and conditions of employment of said employees, which agreement, by its terms, is for the years 1981 and 1982; and that said agreement contained among its provisions the following material herein:

ARTICLE II

AGREEMENT

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SECTION 2.03 - Duration

The terms of this agreement shall become effective on the first day of January, 1981 and any actions taken by the City subsequent to January 1, 1982, in order to perform the provisions thereof on its part to be performed shall be made retroactive to January 1, 1981 and this agreement shall terminate at the close of business through the 31st day of December, 1982. In the event agreement is not reached for renewal of the contract by that date, the existing terms and conditions shall continue to apply until settlement is reached in negotiations. Conferences and negotiations shall be carried on between the City and the Union during the last year of the contract as follows:

Step 1: The Union and the City shall exchange proposals in writing by August 1.

Step 2: Both parties shall thereafter meet to review the proposals at an open meeting on or before August 31, 1982.

The foregoing timetable is subject to change by mutual agreement of the parties.

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SECTION 24.01 - Existing Practices

The parties agree that all wages, hours and conditions of employment in effect as of the date of this Agreement and not herein changed shall remain in effect unless changed by mutual agreement in writing.

4. That on July 27, 1981 the City filed the petition initiating the instant proceeding, and therein requested that the Wisconsin Employment Relations Commission issue a declaratory ruling and therein determine, in effect, whether the provision set forth in Section 24.01 of the 1981-1982 collective bargaining agreement between the parties related to a permissive or mandatory subject of collective bargaining within the meaning of the Municipal Employment Relations Act; that on the following day the Commission directed a letter to the City, indicating that its petition was not in conformity with the Wisconsin Administrative Code, in that it "fails to include the specific language of the current contract" objected to, as well as "a clear and concise statement of the facts relied upon" in support of the City's position; and that on August 19, 1981 the City filed an amended petition remedying the defects in its original petition.

5. That the Union, on September 4, 1981, after it had received a copy of the amended petition, filed a motion urging the Commission to dismiss the instant proceeding on the contention that it was prematurely filed, as there existed no "dispute" between the parties which, pursuant to Section 111.70(4)(b) and of MERA and ERB Chapter 31, Wis. Admin. Code, is a condition precedent to the processing of a petition for declaratory ruling to determine whether either party has the duty to bargain on any subject; that prior to any Commission action on said motion, the Union, on September 8, 1981, filed a statement in opposition to the amended petition filed by the City, wherein the Union asserted that the contractual provision involved related to a mandatory subject of bargaining, inasmuch as it related to wages, hours and conditions of employment, and that, therefore, the City had the duty to bargain on said provision; that hearing in the matter was scheduled for November 10, 1981, but that said hearing was cancelled and the parties stipulated to the material facts and submitted briefs in support of their respective positions.

6. That the City filed its petition and amended petition for the purpose of determining whether, during the negotiations on an agreement to succeed the

existing 1981-1982 collective bargaining agreement, it will have the duty to collectively bargain with the Union regarding the language contained in Section 24.01 in the 1981-1982 collective bargaining agreement.

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

CONCLUSION OF LAW

1. That, since there presently exists no dispute, within the meaning of Section 111.70(4)(b) of the Municipal Employment Relations Act, between the City of Glendale and District Council 48, AFSCME, AFL-CIO and its affiliated Local 1261, as to whether language identical to that contained in Section 24.01 of the 1981-1982 collective bargaining agreement presently existing between the parties relates to a mandatory subject of bargaining within the meaning of the provisions of the Municipal Employment Relations Act, the Wisconsin Employment Relations Commission will not exercise its jurisdiction to issue a declaratory ruling in the matter.

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

ORDER

1. That the motion of District Council 48, AFSCME and its affiliated Local 1261, to dismiss the petition and amended petition for declaratory ruling filed by the City of Glendale, be, and the same hereby is, granted on the basis that said petition and amended petition were prematurely filed, and therefore said petitions are hereby dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 30th day of June, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli
Gary L. Covelli, Chairman
Morris Slavney
Morris Slavney, Commissioner
Herman Torosian
Herman Torosian, Commissioner

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- 1/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(Footnote continued on Page 4)

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION
OF LAW AND ORDER DISMISSING PETITIONS FOR DECLARATORY RULING


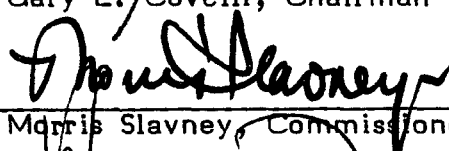
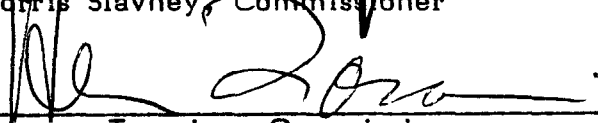
The Union and the City are parties to a collective bargaining agreement covering certain employees of the City for the years 1981 and 1982, and by its terms, the parties exchange proposals for a successor agreement by August 1, 1982. The petition and amended perfected petition filed by the City, initiating the instant proceeding were filed on July 27 and August 21, 1981, approximately one year prior to the date the parties commence their bargaining on a successor agreement. The City seeks a declaratory ruling as to whether the "Existing Pactices" provision in the existing agreement relates to a mandatory subject of bargaining within the meaning of the Municipal Employment Relations Act. A separate proceeding was initiated by the City with respect to similar provisions in a 1981 agreement existing between it and another local of District Council 48, covering other employees of the City. 2/

The Union, among other things, filed a motion urging the Commission to dismiss the proceeding on the basis that the petitions filed by the City were premature, since the present agreement remains in full force and effect through December 31, 1982, and contemplates that the parties exchange their proposals, commencing their negotiations, on or about August 1, 1982.

While the City contends that the declaratory ruling sought by it is not to be applied to the existing agreement, but rather to bargaining over a successor contract, the Commission deems it to be prematurely filed, both under the provisions of MERA and the rules of the Commission (Chapters 18 and 31, Wis. Admin. Code), since the anticipated "dispute" between the parties was remote at the time of the filing of the petitions herein. The Commission is today issuing its declaratory ruling in a companion case, which involves a similar provision, which ruling should provide the parties with guidance if the alleged "dispute" should arise in their negotiations on a successor to the 1981-1982 agreement.

Dated at Madison, Wisconsin this 30th day of June, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman

Morris Slavney, Commissioner

Herman Torosian, Commissioner