

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
CITY OF GLENDALE :
Requesting a Declaratory Ruling : Case XXX
Pursuant to Section 111.70(4)(b), : No. 28484 DR(M)-195
Wis. Stats., Involving a Dispute : Decision No. 19720
Between Said Petitioner and :
GLENDALE PROFESSIONAL :
POLICEMEN'S ASSOCIATION :

Briefs Filed By:

Mulcahy and Wherry, S.C., Attorneys at Law, by Mr. Robert Mulcahy, 815 East
Mason Street, Milwaukee, Wisconsin 53202, for the City.
Gimbel, Gimbel & Reilly, Attorneys at Law, by Ms. Linda S. Vanden Heuvel,
270 E. Kilbourn Avenue, Suite 900, Milwaukee, Wisconsin 53202, for the
Association.

FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER DISMISSING PETITION FOR DECLARATORY RULING

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 in negotiations for a successor agreement with respect to a provision presently included in a 1981-1983 collective bargaining agreement between it and the Glendale Professional Policemen's Association; and said Association 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 December 21, 1981; and the Commission being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

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 Police Department.
2. That Glendale Professional Policemen's Association, hereinafter referred to as the Association, is a labor organization and has its offices at 9730 West Bluemound Road, Wauwatosa, Wisconsin 53226.
3. That at all times material herein the Association has been, and is, the certified collective bargaining representative of non-supervisory law enforcement personnel in the employ of the Police Department of the City, and in said relationship the City and the Union are parties to a collective bargaining agreement covering the wages, hours and conditions of employment of said employees, which agreement contains, among its provisions, the following material herein:

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, 1981, 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 1983. 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 Unit during the last year of the contract as follows:

- Step 1: Submission of bargaining unit request in writing by August 1st to the Labor Negotiator and Common Council.
- Step 2: The Labor Negotiator will advise the bargaining unit by August 31 of the position of the City concerning its bargaining requests.
- Step 3: Negotiations to begin after the response of the City but in no event later than September 15.

It is agreed that the dates specified in this timetable are subject to adjustment by mutual agreement.

. . .

ARTICLE IV

WAGES AND SALARIES

Effective 1/1/83 there will be a reopener on wages and four (4) other items chosen by each party.

. . .

SECTION 20.11 - Miscellaneous Provisions

- (b) Wages, hours and all other conditions of employment in effect on January 1, 1980, shall except as changed herein, be maintained during the term of this agreement. No employee shall suffer a reduction in such benefits as a consequence of the execution of this agreement unless specifically agreed.

SECTION 23.01 - Supersede

The provisions within this Agreement supersede any previous Agreement, ordinance, resolution, etc., affecting wages, hours, and conditions of employment for the employees covered herein.

SECTION 23.02 - Entire Agreement

All contractual rights and benefits currently enjoyed by the members of the Association which are conditions of employment shall continue in effect after the expiration of this contract until a new contract has been reached.

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 provisions set forth in Sections 20.11 and 23.02 of the 1981-1983 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 on August 28, 1981 the Association filed a response to the City's amended petition, and therein contended that the subject matter of such amended

petition related to a mandatory subject of bargaining, and further wherein the Association contended that the City and the Association were parties to the aforementioned collective bargaining agreement, and that, therefore, because of the agreement's three year term, there was "no need to schedule" an immediate hearing in the matter; that thereafter hearing in the matter was set for November 10, 1981; however, that the parties on October 30, 1981 filed a stipulation setting forth the material facts, and as a result the Commission set aside the notice of hearing in the matter, and thereafter the parties filed 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 1981-1983 collective bargaining agreement, it will have the duty to collectively bargain with the Union with respect to the language contained in Section 20.11 and 23.02 of the 1981-1983 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 immediate dispute, within the meaning of Sec. 111.70(4)(b) of the Municipal Employment Relations Act, between the City of Glendale and the Glendale Professional Policemen's Association, as to whether the language identical to that contained in Sections 20.11 and 23.02 of the 1981-1983 collective bargaining agreement 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 instant 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 amended petition filed herein be, and the same hereby is, dismissed on the basis that said petition was prematurely filed.

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

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
(Continued on Page 4)

1/ (Continued)

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.

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 PETITION FOR DECLARATORY RULING

The Association and the City are parties to a collective bargaining agreement effective from January 1, 1981 through December 31, 1983, with a provision providing that said agreement may be reopened for limited bargaining on January 1, 1983. The petition and amended perfected petition were filed on July 27 and August 21, 1981 by the City, initiating the instant proceeding, shortly following the execution of the 1981-1983 collective bargaining agreement.


The City seeks a declaratory ruling as to whether Sections 20.11 and 23.02 in the existing agreement relate to a mandatory subject of bargaining within the meaning of the Municipal Employment Relations Act. A parallel proceeding was commenced by the City with respect to a provision similar to Section 23.02 existing in a 1981 collective bargaining agreement between the City and a Local of District Council 48, AFSCME, AFL-CIO, and wherein the Commission has issued a declaratory ruling. 2/


In its response to the petitions the Association, among other things, urges the Commission to delay the instant proceeding for the reason that the petitions were filed immediately following the execution of the existing three year agreement.

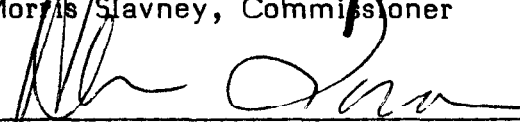
While the City contends that the declaratory ruling sought by it is not to be applied to the existing agreement but rather to negotiations for a successor agreement, the Commission deems it to be prematurely filed, both under the provisions of MERA and the rules of the Commission (Chapters 18 and 31, Wis. Admin. Code), since the anticipated "dispute" with regard to the bargainability of the provision was both speculative and remote at the time of the filing of the petition herein. The Commission is today issuing its declaratory ruling in the case noted above involving a similar provision. Said ruling should provide the parties with a guidance should the alleged anticipated "dispute" actually arise in the future negotiations between the instant parties.

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

2/ Case XXXI, Dec. No. 19719