

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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|-----------------------------------|---|---------------------|
| In the Matter of the Petition of  | : |                     |
|                                   | : |                     |
| CITY OF BROOKFIELD                | : | Case XLIV           |
|                                   | : | No. 29905 DR(M)-232 |
| Requesting a Declaratory Ruling   | : | Decision No. 19735  |
| Pursuant to Section 111.70(4)(b), | : |                     |
| Wis. Stats., Involving a Dispute  | : |                     |
| Between Said Petitioner and       | : |                     |
|                                   | : |                     |
| CITY OF BROOKFIELD, LIBRARY       | : |                     |
| EMPLOYEES, LOCAL 20 OF WISCONSIN  | : |                     |
| COUNCIL 40, AFSCME                | : |                     |
|                                   | : |                     |

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ORDER OF DISMISSAL

City of Brookfield having on June 11, 1982 filed a petition with the Wisconsin Employment Relations Commission pursuant to Sec. 111.70(4)(b), Stats., seeking a declaratory ruling regarding the City's duty to bargain with City of Brookfield Library Employees, Local 20, AFSCME, AFL-CIO over certain proposals made by Local 20 during collective bargaining; and Local 20 having on June 15, 1982 informed the Commission that the parties were in the midst of an informal investigation of Local 20's petition for mediation-arbitration under Sec. 111.70(4)(cm)6, Stats. when by letter of May 27, 1982 the City served written objections to certain of Local 20's proposals upon Investigator William Houlihan; and Local 20 having asked the Commission to dismiss the petition as untimely under ERB 31.12(3) as it was not filed within 10 days of the service of written objections upon the Commission; and the City having responded to Local 20's request for dismissal on June 16, 1982 stating its belief that it could file a petition any time "prior to the close of the informal investigation . . ."; and the Commission having considered the matter and having concluded that the instant petition is untimely under ERB 31.12(3) as it was not filed within 10 days of the May 28, 1982 receipt by Investigator Houlihan of the City's May 27, 1982 written objections and therefore that said petition should be dismissed;

NOW, THEREFORE, it is

ORDERED

That the petition for declaratory ruling is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 8<sup>th</sup> day of July, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli  
 Gary L. Covelli, Chairman

Morris Slavney  
 Morris Slavney, Commissioner

Herman Torosian  
 Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING ORDER OF DISMISSAL

On January 18, 1982, Local 20 filed a petition for mediation-arbitration pursuant to Sec. 111.70(4)(cm)6, Stats., to resolve an alleged impasse in collective bargaining between it and the City of Brookfield and on February 15, March 2, and April 7, 1982, William Houlihan, a member of the Commission's staff, met with the parties as an Investigator to either assist the parties in reaching an agreement or to certify to the Commission that the parties were at impasse. During his investigation of the mediation-arbitration petition, Investigator Houlihan called for the parties to begin to exchange final offers. On May 11, 1982 Houlihan received a May 10 final offer from Local 20. On May 20, 1982 Houlihan sent a letter to the City directing it to specifically identify any portions of Local 20's offer which it believed to be permissive subjects of bargaining. Houlihan's letter of May 20 also directed the City's attention to ERB 31.11 and 31.12. By letter dated May 27, 1982 and received by Houlihan on May 28, 1982, the City complied with Houlihan's request and specifically identified the proposals it found objectionable. As the City did not file a copy of its May 27 letter with Local 20, Houlihan forwarded a copy of same to Local 20 on June 3, 1982. On June 11, 1982 the Commission received the City's petition for a declaratory ruling on those portions of Local 20's May 10 offer which it had on May 28 identified as being objectionable.

ERB 31.11 sets forth the following procedure for raising objections that proposals relate to non-mandatory subjects of bargaining:

(1) TIME FOR RAISING OBJECTION. Any objection that a proposal relates to a non-mandatory subject of bargaining may be raised at any time after the commencement of negotiations, but prior to the close of the informal investigation or formal hearing.

(a) During negotiations, mediation or investigation. Should either party, during negotiations or during commission mediation or investigation raise an objection that a proposal or proposals by the other party relate to a non-mandatory subject of bargaining, either party may commence a declaratory ruling before the commission pursuant to s. 111.70(4)(b), Stats., and chapter ERB 18, Wis. Adm. Code seeking a determination as to whether the proposal or proposals involved relate to a non-mandatory subject or subjects of bargaining.

(b) At time of call for final offers. Should either party, at such time as the commission or its agent calls for and obtains and exchanges the proposed final offers of the parties, or within a reasonable time thereafter as determined by the commission or its investigator, raise an objection that a proposal or proposals by the other party relate to a non-mandatory subject of bargaining, such offers shall not be deemed to be final offers and the commission or its agent shall not close the investigation or hearing but shall direct the objecting party to reduce the objection to writing, identifying the proposal or proposals claimed to involve a non-mandatory subject of bargaining and the basis for such claim. Such objection shall be signed and dated by a duly authorized representative of the objecting party, and copies thereof shall, on the same date, be served on the other party, as well as the commission or its agent conducting the investigation or hearing, in the manner and within such reasonable time as determined by the commission or its investigator.

(2) EFFECT OF BARGAINING ON PERMISSIVE SUBJECTS. Bargaining with regard to permissive subjects of bargaining during negotiations and prior to the close of the investigation shall not constitute a waiver of the right to file an objection as set forth in par. (1)(b) above.

Pursuant to ERB 31.11(1)(b) the City properly raised an objection to a portion of Local 20's May 10 offer. Also pursuant to ERB 31.11(1)(b) Investigator Houlihan properly directed the City to reduce its objection to writing. The City did so in a timely fashion by its May 27 letter to Houlihan which was received on May 28, 1982.

ERB 31.12(3) states the following as the procedure which must be followed to file a petition for declaratory ruling after a party has raised an objection under ERB 31.11:

(3) WHEN TO FILE. Such a petition or stipulation may be filed with the commission during negotiations, mediation or investigation. If such a petition or stipulation is filed after the investigator calls for final offers, such a petition or stipulation for declaratory ruling must be filed within 10 days following the service on the commission or its investigator of the written objection that a proposal or proposals relate to non-mandatory subjects of bargaining. Failure to file such a petition or stipulation within this time period shall constitute a waiver of the objection and the proposal or proposals involved therein shall be treated as mandatory subjects of bargaining.

Pursuant to this rule, the City had until June 7, 1982 (10 days from the May 28 receipt of its written objections) to timely file its petition for declaratory ruling. As the instant petition was not filed until June 11, 1982, it is untimely and by operation of ERB 31.12(3) the City has waived its objection to the proposals in question. As the petition is untimely the Commission is hereby dismissing same. While the City has correctly noted that ERB 31.11 allows it to raise an "objection" to an offer at any time prior to the close of the investigation, it must follow ERB 31.12(3) when it places its objection before the Commission as a declaratory ruling. The time requirement established by ERB 31.12(3) for filing a petition fosters the prompt resolution of disputes and must be honored by all parties.

Dated at Madison, Wisconsin this 8<sup>th</sup> day of July, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli  
Gary L. Covelli, Chairman

Morris Slavney  
Morris Slavney, Commissioner

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