

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
CITY OF MARINETTE :
To Initiate Final and Binding :
Arbitration Between Said :
Petitioner and :
MARINETTE FIREFIGHTERS UNION, :
LOCAL 226, IAFF, AFL-CIO :

Case XXX
No. 19751 MIA-678
Decision No. 20591-A

In the Matter of the Petition of :
MARINETTE FIREFIGHTERS UNION, :
LOCAL 226, IAFF, AFL-CIO :
To Initiate Final and Binding :
Arbitration Between Said :
Petitioner and :
CITY OF MARINETTE :

Case XXXIII
No. 30840 MIA-716
Decision No. 20592-A

Appearances:

Mr. Thomas P. Schwaba, City Attorney, 1712 Dunlap Square, P.O. Box 483,
Marinette, Wisconsin 54143, appearing on behalf of the City.
Mr. Leroy Waite, 5th District Vice President, IAFF, 1600 East Ridge Road,
Beloit, Wisconsin 53511, appearing on behalf of the Union.

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER DENYING MOTION AND HOLDING
PETITIONS IN ABEYANCE

During the course of the WERC's informal investigation of the above-noted Union's December 16, 1982 petition for Sec. 111.77, Stats., municipal interest arbitration (MIA) of an alleged impasse with the above-noted City, the City filed a February 28, 1983 Motion to Dismiss the petition on the grounds that the parties had already reached and were bound to a 1982-83 collective bargaining agreement such that the alleged impasse could not exist.

The Commission ordered a consolidated formal investigation regarding that petition and a previous May 17, 1982 City MIA petition concerning the same round of bargaining. WERC Examiner Amedeo Greco conducted the formal investigation hearing at Marinette, Wisconsin, on May 18, 1983, after which the parties filed written arguments in the matter. Based on the record of the hearing and the briefs of the parties, the Commission hereby issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Marinette Firefighters Union, Local 226, IAFF, AFL-CIO, hereinafter referred to as the Union, is a labor organization and the exclusive collective bargaining representative of the non-supervisory firefighters employed by the City of Marinette. The Union's principal place of business is at 1450 Main Street, Marinette, Wisconsin.

2. The City of Marinette, hereinafter referred to as the City, is a municipal employer. The City's principal place of business is at the Marinette City Hall, Marinette, Wisconsin.

3. The City and Union were parties to a collective bargaining agreement in effect from January 1, 1981 through at least December 31, 1982.

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4. On May 17, 1982, the City filed with the Wisconsin Employment Relations Commission, hereinafter referred to as WERC or Commission, an MIA petition with respect to an alleged impasse between the parties regarding terms and conditions of employment for the City's non-supervisory firefighters "commencing January 1, 1982." The City acknowledged therein that the City had received the required 180 day notice pursuant to Sec. 111.77, Stats., and that the parties had met but had been unable to reach an agreement on the terms of a successor to their 1981 agreement.

5. An informal investigation meeting was scheduled and held on July 7, 1982. It was conducted by WERC Investigator Edmond J. Bielarczyk, Jr., pursuant to the City's petition. At that meeting, the parties reached a "tentative agreement" in handwritten form signed by City Attorney Thomas Schwaba and Union representative Robert Smith, with the understanding that the final agreement would be conditioned upon a favorable ratification vote by both the Union membership and the City Council. That tentative agreement covered calendar years 1982-83 and read as follows:

1. 4% 1-1-82 add 4% 7-1-82
if refunding project is okayed and auditors
approve use of it for salaries
net to the city \$100,000 or more and
2. 8% 1-1-83
3. Dental - \$16 - effective 1-1-82
Effective 1-1-83 - 45% employer contribution to family
plan, full single
4. Sick leave, effective 1-1-82
Change accumulation maxim 60 days
Change accumulation accrual to one day per month upon
retirement - Sick leave pay out of 33% not to exceed 20
days (can be issued to pay for insurance)
5. Effective 1983 - Supervisory unit will either pick in
rotation (2nd pick in 83) or their picks will not effect
bargaining unit members pick.
6. Vacation - After 3 years can use 5 days at single time
with the approval of the Chief. (delete 2 days for all
permanent employes).
7. 1/2 day's pay for New Year's Eve.

6. At the time of the July 7, 1982 tentative agreement, both parties' bargaining representatives understood that the "refunding project" referred to in the first item of that tentative agreement was an on-going City effort at restructuring assets in a then-existing escrow account. The only City escrow account in existence in July of 1982 or in the several preceding years was one consisting of several million dollars worth of U.S. Government 1975 securities, held by the First Wisconsin National Bank as trustee. Articles in the local newspaper had appeared prior to July 7, 1982, describing the City's effort to obtain additional current operating funds by means of transactions affecting the securities in that account.

7. A Union meeting was held on the Monday following the July 7, 1982 tentative agreement. The only individuals attending the meeting were Smith and the four bargaining unit employees on duty on that day. The Union did not vote on the question of ratification at that time for lack of a quorum. The Union next met in August, but again a quorum was not present, and the matter of ratification was not acted upon. The Union has not, as of the formal investigation hearing in this matter, conducted a membership vote on whether or not to ratify the terms of the July 7, 1982 tentative agreement.

8. The City Council of the City tabled the question of ratification of the tentative agreement at its August meeting because of uncertainty as to whether the second year wage increase was to be 8% or 9%. At its September, 1982 meeting, the City Council voted to ratify the tentative agreement.

9. Following the City Council's ratification of the tentative agreement, the City put into effect the terms of the tentative agreement including the payment of the January 1, 1982 (retroactive) and January 1, 1983, general wage increases provided for therein. The City did not provide a 4% July 1, 1982 increase, however, because the "refunding project" as regards the 1975 U.S. securities in escrow had been delayed by legal disputes with the trustee bank's law firm to a point in time when prevailing interest rates would have provided no more than \$20,000 of additional operating funds had the City gone through with the refunding project. Instead, the City abandoned the effort to restructure the bonds in question, at least until the interest rate climate improves. The City also had not, as of the time of the formal investigation hearing in this matter, chosen either one of the two agreed-upon alternatives noted in tentative agreement item 5. In that regard, Schwaba wrote the Union on November 2, 1982 as follows:

If the fire supervisors accurately stated the method of selection, then there was not a meeting of minds between the Personnel Committee and your bargaining unit and the matter was inappropriately presented to the Common Council when it approved the Personnel Committee's recommendation. I and the other members of the Personnel Committee would like to meet with you or other representatives of your bargaining unit to discuss this matter in order to determine whether or not to petition the WERC for reopening the negotiations. Please call Fred Westphal to schedule a date for a meeting with the Committee.

10. The Union met to discuss that letter, and thereafter, City and Union representatives met on November 15, 1982. The specific developments that occurred at that meeting are not revealed in the record except that the parties discussed both the supervisors' vacation selection procedure and the status of the July 1, 1982 contingent wage increase.

11. On December 16, 1982, the Union filed its own MIA petition asserting that, "after a reasonable period of negotiation and after a settlement was reached through mediation, the City of Marinette now wishes to reopen our 1982 contract."

12. Thereafter, the City also implemented the New Year's Eve holiday modification provided for in item 7 of the tentative agreement, but only after Union representatives contacted the City Attorney's office on three separate occasions in efforts to cause the City to implement that change in a manner wholly consistent with the parties' tentative agreement.

13. The City proceeded with its above-noted implementation of the terms of the tentative agreement without obtaining an unconditional signed collective bargaining agreement for 1982-83, and, apparently without any communication from the Union to the effect that the Union membership had ratified the terms of the tentative agreement. WERC Investigator Mary Jo Schiavoni conducted an informal investigation pursuant to the Union's petition on February 26, 1983. When the parties were unable to reach an agreement, Investigator Schiavoni called for them to submit final offers on the disputed issues. Both parties submitted documents containing their final offers to Investigator Schiavoni. However, prior to the conclusion of the investigation session on February 26, 1983, the City expressly reserved the right to file a motion to dismiss the Union's MIA petition on the grounds that the parties are already bound by an agreement for the 1982-83 term. Investigator Schiavoni agreed not to close the investigation if the City filed such a petition in a timely manner.

14. The City thereafter timely filed the instant motion to dismiss, and the investigation has not, to date, been closed.

15. The tentative agreement reached between the parties on July 7, 1982 was conditioned upon subsequent ratification both by the Union membership and by the City Council. The City Council ratified those terms, but the Union membership has yet to convene in sufficient numbers for a vote on whether to ratify that agreement. Accordingly, there does not, at present, exist a binding 1982-83 collective bargaining agreement between the City and the Union.

Based upon the foregoing Findings of Fact, the Commission hereby issues the following

CONCLUSIONS OF LAW

1. There does not, at present, exist a binding 1982-83 collective bargaining agreement between the City and the Union.

2. That the parties' implicit understanding that the tentative agreement would be submitted to the Union membership and to the City Council for ratification votes, is a procedure agreed to between the parties within the meaning of Sec. 111.77(1)(f), Stats., and if complied with may result in a settlement.

3. Whether the July 7, 1982 tentative agreement will or will not constitute a binding collective bargaining agreement remains to be determined through a vote of the Union membership on whether or not to ratify the terms of that tentative agreement.

4. There is no basis at this time for dismissing the Union's MIA petition herein.

5. However, there is also no basis at this time for processing that petition further until the Union conducts a vote of a quorum of its members as regards whether to ratify the terms of the July 7, 1982 tentative agreement and advises the WERC and the City, in writing, of the results of that vote.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Commission hereby issues the following

ORDER

1. The City's motion to dismiss the Union's MIA petition shall be, and hereby is, denied.

2. Further processing of the MIA petitions filed by the City and the Union shall be, and hereby is, held in abeyance until the Union conducts a vote of a quorum of its members as regards whether to ratify the terms of the July 7, 1982 tentative agreement and advises the City and the WERC of the results.

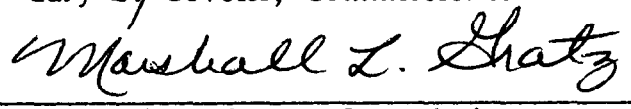
Given under our hands and seal at the City of
Madison, Wisconsin this 14th day of October, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER DENYING
MOTION AND HOLDING PETITIONS IN ABEYANCE

POSITION OF THE CITY:

The City moves to dismiss the instant MIA proceeding on the ground that the parties have already bound themselves to an agreement in effect for the calendar years 1982-83. The City argues that the Union accepted without complaint the benefits of the City's implementation of the tentative agreement reached between the parties on July 7, 1982. After an inexplicable delay of several months, the Union now seeks to avoid the agreement apparently because the refunding project contingency did not materialize so as to provide the funding for an additional 4% increase effective July 1, 1982. The tentative agreement reflects terms that both sides understood as of July 7, 1982, and in the circumstances the Union should be bound to live with those agreed-upon terms.

POSITION OF THE UNION:

The Union responds that there is no signed agreement between the parties and that the parties cannot even be deemed to have reached a tentative agreement in light of developments subsequent to July 7, 1982. Specifically, the City showed confusion at the outset regarding the amount of the second year wage increase; the City has asserted that the "refunding project" has not produced the requisite \$100,000 based on a different understanding of what investments were thereby referred to than the Union had at the time of the tentative agreement; the City's November 2 letter shows that there was a misunderstanding regarding the vacation scheduling issue which the City considered substantial enough to render the tentative agreement invalid; and the City went all the way through the February, 1983 investigation and submitted its final offer before it raised any question about whether there is already a binding agreement for 1982-83. The Union argues that those factors demonstrate that there is no binding agreement between the parties that would make Sec. 111.77 inapplicable at this time. For those reasons, the Union requests that the Commission close the investigation, certify the final offers submitted to Investigator Schiavoni, and order arbitration in the matter.

DISCUSSION:

We have rejected the Union's contention that the tentative agreement is void for lack of a meeting of the minds concerning which investment securities were the subject of the "refunding project." In that regard, Union representative Smith testified that as of July 7, 1982, he and the other Union bargainers understood the "refunding project" to be a City attempt at "a restructuring of their escrow account." 1/ The Union had a full opportunity to clarify what specific assets the City had in its escrow account(s), but the record shows that it asked no such questions during the July 7, 1982 investigation session. The evidence also reveals that the City had but one escrow account at the time (and in the several years preceeding 1982) and that that account contained only the 1975 U.S. Government Bonds as to which the refunding effort was ultimately abandoned in good faith in September or October of 1982.

We have also concluded that the City's conduct does not constitute either repudiation or waiver of the tentative agreement by the City. First we note that the City Council, did in fact, ratify the tentative agreement in September, 1982. While the City's November 2nd letter comes close to a proposal that the tentative agreement be set aside as flawed, it stops short by asking for a meeting on the subject rather than unequivocally proposing a course of action inconsistent with the continued viability of the tentative agreement. In all other respects, the City has taken it upon itself to implement the tentative agreement, even to the extent of conforming its New Year's Eve holiday compensation to the terms of that

1/ Tr. 57-58, 75.

agreement after communications from the Union were received on that point. While there were some initial delays and administrative problems, the City cannot be said to have acted in such a way as to relieve the Union of its obligation to submit the tentative agreement reached on July 7, 1982 to a ratification vote of its membership.

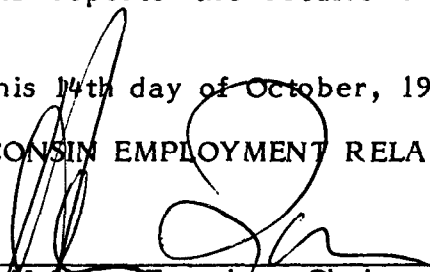
We have also rejected, however, the City's contention that, in view of the Union's delay in claiming that there is no binding agreement and its acceptance without complaint of the benefits implemented in the interim, the Union must be bound to the tentative agreement terms even absent ratification thereof by the Union membership. We so conclude because it appears that the City opted to implement the tentative agreement terms without receiving a communication from the Union that its membership had ratified the terms. The City knew that the agreement was "tentative;" hence, the City knew or should have known that it was subject to ratification not only by the City Council but also by the Union membership. The City also knew or could have learned whether the Union membership had ratified, prior to implementing the terms of the tentative agreement. In such circumstances, we find no basis on which to treat the as yet unratified tentative agreement as binding upon the parties.

In sum, we concur with the City that a tentative agreement was reached and that none of the developments of record since July 7, 1982, render that tentative agreement invalid. However, we also conclude that, as a tentative agreement, those terms were to become binding on the parties only if ratified by the City Council and the Union membership. The record reveals that the matter has not, as yet, been put to a vote of a quorum of the Union membership. Hence, the tentative agreement remains subject to the implicitly agreed-upon condition that it must be ratified by the Union membership before it becomes binding on the parties. Accordingly, we have denied the City's motion to dismiss, but we have held in abeyance the further processing of the MIA petitions in the matter until the Union conducts the ratification vote and reports the results to the City and the WERC. 2/

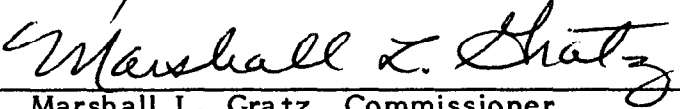
Dated at Madison, Wisconsin this 14th day of October, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Forosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

2/ Sec. 111.77(3), Stats., provides, in pertinent part, that the Commission may require the parties to comply with procedures they have agreed to, if it may result in a settlement.