

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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RIVER HILLS POLICE ASSOCIATION,	:	
	:	
Complainant,	:	
	:	
vs.	:	Case 5
	:	No. 32506 MP-1535
VILLAGE OF RIVER HILLS,	:	Decision No. 21328-A
	:	
Respondent.	:	
	:	

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Appearances:

Vanden Heuvel Law Offices, by Ms. Linda S. Vanden Heuvel, 828 North Broadway, Suite 400, Milwaukee, Wisconsin 53202, on behalf of Complainant.  
Mr. Tom E. Hayes, 229 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, on behalf of Respondent.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

AMEDEO GRECO, Hearing Examiner: River Hills Police Association, herein the Association, filed a complaint with the Wisconsin Employment Relations Commission on December 1, 1983, alleging that the Village of River Hills, herein the Village, had committed prohibited practices within the meaning of Sections 111.70(3)(a)1 and 5 of the Municipal Employment Relations Act, herein the MERA, by refusing to bargain with the Association over the impact of its decision to assign fire-fighting duties to its employes. The Commission appointed the undersigned to make and issue Findings of Fact, Conclusions of Law and Order, as provided for in Sec. 111.07(5), Stats. The parties subsequently waived their right to a hearing and agreed that the issues herein could be resolved upon the basis of undisputed facts. The parties filed briefs and the briefing schedule was closed on October 16, 1984.

Having considered the arguments and the factual stipulation, the Examiner makes and files the following Findings of Fact, Conclusions of Law and Order

FINDINGS OF FACT

1. The Association is a labor organization whose address is 828 North Broadway, Suite 400, Milwaukee, Wisconsin. At all times pertinent hereto, it has been the recognized exclusive collective bargaining representative of police sergeants and patrolmen employed by the Village in its police department, as set forth in the collective bargaining agreement of the parties.
2. The Village is a municipal employer as defined in Sec. 111.70(1)(a), Wis. Stats., with its principal offices located at 7650 North Pheasant Lane, River Hills, Wisconsin. Its principal representative is Village Manager John N. Fredrickson who acts on the Village's behalf.
3. The Association and the Village are parties to a collective bargaining agreement in effect from January 1, 1983 to December 31, 1984 and which provides for final and binding arbitration. Article V of the agreement, entitled "SALARY," sets forth the salaries to be paid to patrolmen and sergeants and immediately thereafter it provides:

In addition, patrolmen or sergeants called in for fire or rescue calls or reporting for fire training on an off day, or after release from duty, or earlier than two hours before regular reporting time, shall be paid \$25.00 for up to two hours of duty and at the rate of \$12.50 per hour for duty beyond two hours providing that the employee so called reports expeditiously. Qualified (sic) EMT's shall receive an additional \$3.00 an hour when serving as EMT when called in as above.

Attendance at fire training is not required on an officer's 'single' off-day.

4. Article XIII of said contract, entitled "DISABILITY PAY," states:

After one year's service employees will be eligible for full salary and benefits during the period of any disability incurred in the line of duty as follows:

- a. The term "disabled in the line of duty" is defined to mean such disability as is found to have been incurred as a direct result of physical injury or disease sustained by a police officer in the performance of the duties assigned to him as a police officer.
- b. VILLAGE has the option of requiring work to limit of functional ability by partially disabled employee as determined by the Village Health Officer. VILLAGE will provide transportation to and from work if employe is physically unable to drive an automobile and no other transportation is reasonably available.
- c. Full pay and benefits will be provided to such disabled employee on the condition that all workmen's compensation payments received by such disabled employee are endorsed and delivered to the VILLAGE.
- d. Maximum period of disability permitted (sic) for any one injury is nine (9) months for an injury incurred during 1983 and twelve (12) months for an injury incurred thereafter.
- e. Repeated injuries or abuse of this article by an employee shall be cause for review of this employment status.

5. Article XXII of said contract, entitled "RESIDENCE," provides:

All employees shall reside within the area bounded by Lakefield Road, Lake Michigan, Hampton Avenue, 76th Street from Hampton Avenue to County Line Road, County Line Road from 76th Street to 60th Street, 60th Street from County Line Road to the Milwaukee River, and the Milwaukee River from 60th Street to Lakefield Road.

6. By letter dated May 11, 1983, 1/ Association attorney Linda S. Vanden Heuvel advised Village Police Chief Harold Block:

This office has been retained by and represents River Hills Police Association relative to the issue of whether or not the public safety officers are covered under the provision of Wis. Stats. 891.45 (1979) which provides in pertinent part as follows:

In any proceeding involving the application by a municipal fire fighter or his or her beneficiary for disability or death benefits under s. 89.121 or any pension or retirement system applicable to fire

It is the position of the Public Safety Officers employed by the Village of River Hills that because of their firefighting responsibilities, they are covered by the provisions of Wis. Stats. 891.45.

Thank you in advance for your anticipated cooperation.

Hearing nothing further, Vanden Heuvel by letter dated May 27 reiterated that request.

7. In response, Village Manager John Fredrickson by letter dated June 6 informed Vanden Heuvel:

Your letter of May 27, 1983, addressed to Police Chief Harold Block of the River Hills Police Department has been forwarded to me for reply.

As I understand your letter, you are inquiring as to "whether or not the public safety officers are covered under the provisions of Wis. Stats. 891.45 (1979)."

In response let me first state that this Village does not employ "public safety officers". It does employ, in its police department, "police officers". As "police officers", such employees are assigned various duties, and the obligations of both the Village and the police officers are spelled out in the contract between the Village and the River Hills Police Association. This contract does not cover the Village's Fire Department.

Interpreting your inquiry to be: "are the police officers of the Village of River Hills covered under the provisions of Section 891.45 Wis. Stats. of 1979?", the answer is no.

The police officers are not and never have been considered to be "firefighters" as that term is used in the 1979 statute.

The police officers of the Village of River Hills are employees of the Police Department, and their principal duties fall within the scope of active law enforcement, even though, at times, assigned to other duties. The police officers are not employees of the Village Fire Department, and their functions do not fall within the scope of active fire suppression or prevention. Even though the police officers are occasionally called upon and expected to perform duties within the scope of fire suppression or prevention, no police officer of the Village is regularly employed as a fire fighter.

8. On June 27, Vanden Heuvel sent the following letter to Fredrickson:

Thank you for your letter of June 6th, 1983, which I have reviewed with members of the River Hills Police Department. Obviously, the Association takes exception to the conclusion contained in your letter.

Before proceeding further on this matter, however, additional questions must be addressed. I would appreciate your response to the following:

1. Are the police officers of the River Hills Police Department considered "volunteer" firefighters or is their response to fire alarms etc. considered part of their normal police responsibilities?
2. I have been advised that the residency requirement which is placed upon the officers is predicated upon their firefighting responsibilities. Could you please confirm this fact?

3. If an officer is injured while responding to a fire alarm, is he entitled to worker's compensation benefits? Disability benefits? Is the answer to the above question the same whether the officer responds to the fire alarm off duty as compared to on duty?
4. Would you please provide me with a written job description for officers of the department?

Thank you in advance for your immediate response to the foregoing.

Hearing nothing further, Vanden Heuvel by letters dated July 27 and August 19 reiterated that request.

9. Fredrickson by letter dated August 30 informed Vanden Heuvel:

I am in receipt of your letters of June 27 and July 27, 1983. I believe my letter to you of June 6, 1983 is all that need be said on this matter and that continuing correspondence will serve no useful purpose.

10. Vanden Heuvel by letter dated September 6 to Fredrickson replied:

Responding to your letter of August 30, 1983, the Association hereby demands to negotiate on the issues set forth in the Association's letters of May 11, 1983, May 27, 1983, and June 27, 1983. Please let me hear from you forthwith to set up a convenient time and place for negotiations. Thank you in advance for your anticipated cooperation.

11. Since that time, the Village has refused to bargain with the Association over said matters and there is no evidence that the Association has utilized the contractual grievance-arbitration procedure regarding any of the matters in dispute.

Based upon the foregoing Findings of Fact, the Examiner issues the following

CONCLUSION OF LAW

The Village did not violate Secs. 111.70(3)(a)1 or 5 of MERA by refusing to bargain with the Association over its decision to assign firefighting duties to its police officers.

Upon the basis of the foregoing Findings of Fact and Conclusion of Law, the Examiner issues the following

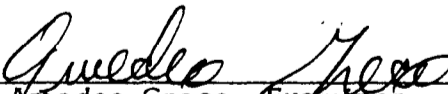
ORDER 2/

It is hereby ordered that the complaint filed herein be, and hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 15th day of January, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Amedeo Greco, Examiner

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2/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the (Footnote 2 continued on Page 5)

2/ (Continued)

findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

VILLAGE OF RIVER HILLS

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

The Association charges that the Village unlawfully refused to bargain over the effects of its decision to assign firefighting duties to its police officers when it refused to bargain with the Association over its residency requirements, over whether those duties are voluntary or mandatory, over job descriptions and duties, and over worker's compensation and disability benefits.

The Village maintains that the complaint should be dismissed because it has no duty to bargain over such matters during the term of the collective bargaining agreement; that there is no duty to bargain over disability benefits because state statutes govern the resolution of such disputes; that the Commission is not the proper forum for resolving such matters; and that the Association has failed to prove that the Village at the present time has a duty to bargain over any of the issues in dispute.

Turning first to the residency requirement issue, the Association's June 27 letter asked the Village to confirm whether its residency requirement was "predicated upon their firefighting responsibilities." Here, the Association has agreed to include the residency requirement in its collective bargaining agreement with the Village. The Association therefore had the opportunity to fully discuss with the Village the relative merits of said residency requirement during the collective bargaining negotiations leading up to agreement on this proviso. That being so, the Village correctly points out that "The motives of a bargainer are not relevant at this point." I agree; as a result, and because the Association in its negotiations over a successor contract can again raise this subject if it so desires, the Village was not required to supply that information beforehand.

The Association also asked the Village whether firefighting duties are voluntary in nature or whether, instead, they are part of an officer's "normal police responsibilities." The Association cites several Commission cases for the proposition that employers have a duty to bargain over duties which are not fairly within the scope of an employee's general duties. It therefore argues that the Village is required to bargain over the effects of its decision to assign firefighting duties to its police officers because "there is nothing to suggest that active fire suppression was within the contemplation of both parties. . . ." when they bargained over this matter and that, moreover, the Association has never clearly waived its right to bargain over same.

The problem with this claim is that the contract already addressed this issue. Thus, Article V of the contract provides how much compensation is to be paid to off-duty employes when they are called in to perform firefighting or rescue duties and under what circumstances on-duty employes are to receive premium pay for performing firefighting duties. This is why the Village acknowledges, "The current agreement on its face in Article V, indicates that fire calls and fire training are among the duties of police officers" and that, "The Agreement makes no reference to volunteer firemen." Since the contract establishes that the parties have already bargained over the question of firefighting duties, the Village was not required during the term of the contract to reopen negotiations over this issue, the Association's demand notwithstanding. Furthermore, if the Association and the Village disagree over the exact scope of those duties, the Association is free to grieve that issue under the contractual grievance/arbitration procedure just as it can do with other contractual disputes.

Left for consideration is the Association's request that the Village bargain over the payment of disability and worker's compensation benefits to employees injured during the performance of their fire fighting duties. The Association claims the contract "does not address the terms and conditions necessary to secure disability benefits for conduct involving firefighting duties" and that the Village therefore is now required to bargain over that issue.

This claim, too, is without merit since the parties have bargained over this issue. For as the Village correctly points out, the contract "provides for disability benefits for injury or disease sustained in the performance of duties assigned" and it "makes no distinction based on the exact act that the officer was performing when the injury was sustained and that, furthermore, there are no material differences as to whether the employees herein are engaged in "police" work or "fire suppression." The Village also notes that various state statutes govern the payment of disability and worker's compensation benefits and that the Association can request informal rulings on these matters from the appropriate state agencies. Since the payment of these benefits is contingent upon applicable contractual and statutory requirements, it must be concluded that the Village is not required to bargain over same during the contract's duration.

Inasmuch as the foregoing establishes that the Village has not breached its duty to bargain, the complaint allegations are dismissed in their entirety. In so finding, however, the narrow holding of this case should be emphasized. Nothing herein is meant to suggest that a union is precluded from bargaining over either a residency requirement or the payment of worker's compensation or disability benefits to employees injured on the job, as such matters are mandatory subjects of bargaining. Furthermore, while the parties have agreed in their contract that employees must perform firefighting duties, nothing herein should be construed to mean that such duties are or are not fairly within the scope of a police officer's regular job duties; to the contrary, the instant record is totally devoid of sufficient factual information to render any such determination.

Dated at Madison, Wisconsin this 15th day of January, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco  
Amedeo Greco, Examiner