

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
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INTERNATIONAL UNION OF	:	
OPERATING ENGINEERS, LOCAL 310	:	
	:	Case 54
To Initiate Arbitration	:	No. 40626 INT/ARB-4921
Between Said Petitioner and	:	Decision No. 25549-B
	:	
CITY OF STURGEON BAY	:	
(UTILITIES)	:	
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ORDER DENYING PETITION TO REOPEN COMMISSION INVESTIGATION

The Wisconsin Employment Relations Commission having, on June 21, 1988, issued an Order requiring that arbitration be initiated for the purpose of resolving the impasse arising in collective bargaining between International Union of Operating Engineers, Local 310, and the City of Sturgeon Bay (Utilities) on matters affecting wages, hours and conditions of employment of all mechanics and mechanics' helpers performing the duties of mechanics and helpers in the Electric, Water and Sewerage Disposal Departments, excluding all supervisory and clerical employes; and on the same date the Commission having furnished the parties a panel of arbitrators for the purpose of selecting a single arbitrator to resolve said impasse; and the Commission having, on July 8, 1988, been advised that the parties had selected Gil Vernon, Eau Claire, Wisconsin as the arbitrator; and the Commission having, on July 13, 1988, appointed Gil Vernon as arbitrator to issue a final and binding award, pursuant to Sec. 111.70(4)(cm)6 and 7, Stats.; and an arbitration hearing having been scheduled for November 16, 1988; and Local 310 having on November 1, 1988 filed a Petition to Reopen Commission Investigation to Determine Whether Arbitration Should Be Commenced Pursuant to Sec. 111.70(4)(cm), Stats.; and the City having filed a written response opposing said Petition on November 8, 1988; and the Commission having considered the matter and concluded that the Petition should be denied;

NOW, THEREFORE, it is

ORDERED

That the Petition to Reopen is denied.

Given under our hands and seal at the City of Madison, Wisconsin this 11th day of November, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
 Stephen Schoenfeld, Chairman

Herman Torosian
 Herman Torosian, Commissioner

A. Henry Hempe
 A. Henry Hempe, Commissioner

CITY OF STURGEON BAY (UTILITIES)

MEMORANDUM ACCOMPANYING ORDER DENYING
PETITION TO REOPEN COMMISSION INVESTIGATION

POSITIONS OF THE PARTIES

Local 310 asserts that the City engaged in bad faith collective bargaining by concealing from Local 310 the City's interest in subcontracting certain unit work. 1/ Local 310 contends that the City's conduct effectively removed subcontracting as a subject to be addressed by Local 310 in its final offer in the Sec. 111.70(4)(cm), Stats., interest arbitration proceedings. Local 310 asks the Commission to issue an order which: (1) stays the November 16, 1988 interest arbitration hearing; and (2) reopens the investigation of Local 310's interest arbitration petition to determine whether the City acted in bad faith and, if so, whether the parties should be allowed to modify their final offers.

The City opposes the position taken by Local 310 and asserts: (1) Local 310's allegations are factually incorrect; (2) the City has been and continues to be willing to discuss the subcontracting issue with Local 310; (3) the Commission no longer has subject matter jurisdiction over the interest arbitration petition, or, lacks statutory authority to reopen the investigation; and (4) the relief sought to expressly prohibited by Sec. 111.70(4)(cm)6.e, Stats.

DISCUSSION

Initially, we note that as a general matter we retain supervisory authority over the interest arbitration process from commencement to conclusion. Thus we reject the City's contention to the contrary.

However, given the content of Sec. 111.70(4)(cm)6.e, Stats., we are satisfied that Local 310's petition must be denied. That statutory provision provides:

Arbitration proceedings shall not be interrupted or terminated by reason of any prohibited practice complaint filed by either party at any time.

This statute establishes a legislative judgement that even if allegations are raised in a prohibited practice complaint which, if proven, could significantly impact upon the legitimacy of an ongoing interest arbitration proceeding, the arbitration process should be allowed to continue. If we were to allow Local 310's petition to interrupt the arbitration proceedings, we would be rendering this legislative judgement meaningless. Thus we must deny same. 2/

Dated at Madison, Wisconsin this 11th day of November, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

A. Henry Hempe
A. Henry Hempe, Commissioner

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- 1/ Local 310 makes essentially the same allegation in a prohibited practice complaint against the City filed November 1, 1988.
 - 2/ However, we would also note that the breadth of our remedial authority under Secs. 111.07 and 111.70(4)(a), Stats., will be sufficient to provide meaningful relief even after an arbitration award is issued if such relief is warranted and necessary to effectuate the purposes of the Municipal Employment Relations Act.