

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE POLICE ASSOCIATION, :
: :
Complainant, : Case 321
: No. 40963 MP-2135
vs. : Decision No. 25743-A
: :
THE CITY OF MILWAUKEE, :
: :
Respondent. :
: :

Appearances:

Fiorenza & Hayes, S.C., 1840 North Farwell Avenue, Milwaukee, Wisconsin 53202, by Mr. Kenneth J. Murray, on behalf of the Milwaukee Police Association.
Mr. Thomas C. Goeldner, Assistant City Attorney, 800 City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202, on behalf of the City of Milwaukee.

FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER GRANTING MOTION TO DISMISS

The Milwaukee Police Association, hereinafter the Association, filed a prohibited practices complaint on August 8, 1988 with the Wisconsin Employment Relations Commission, wherein it alleged that the City of Milwaukee, herein the City, had committed a prohibited practice within the meaning of Sections 111.70(3)(a)(4) Wis. Stats., by refusing to bargain in good faith when it supposedly told the Association in collective bargaining negotiations that it would not agree to any contract better than the one it had just successfully negotiated with the Milwaukee Professional Firefighters Association, Local #215. The City filed an oral answer at the November 23, 1988 hearing and there moved to dismiss the complaint on the ground that it fails to state a course of action. The Association at said hearing dropped without prejudice its prior allegation and amended its complaint to charge that the City engaged in bad faith bargaining when it supposedly offered misleading economic data in an interest-arbitration proceeding before Arbitrator Joseph B. Kerkman, which resulted in a lower economic package than that agreed to in the firefighters' contract. Thereafter, City Labor Negotiator John Tries by letters dated December 12 and December 27, 1988 provided Association attorney Ken Murray with certain relevant economic data bearing on the firefighters' overtime costs which Mr. Murray had requested at said hearing. Both parties indicated that they would not be filing briefs regarding the City's Motion to Dismiss.

The Examiner, having considered the pleadings and the arguments of the parties, and being satisfied that the Motion to Dismiss should be granted, makes and issues the following Findings of Fact, Conclusion of Law and Order Granting Motion to Dismiss.

FINDINGS OF FACT

1. The Association, a labor organization, represents for collective bargaining purposes certain law enforcement personnel employed by the City of Milwaukee.
2. The City of Milwaukee is a municipal employer which, inter alia, provides law enforcement services.
3. The City and Association in 1988 participated in an interest-arbitration proceeding before Arbitrator Joseph B. Kerkman for a successor contract covering 1987-1988. Said proceeding included about twenty-two (22) meetings before Arbitrator Kerkman, including hearing days of August 6 and 8, 1988, at which time the parties had the opportunity to adduce evidence regarding the recently negotiated contract between the City and the Milwaukee Professional Firefighters' Association, Local #215, which removed a prior overtime cap in the latter's collective bargaining agreement. The City in said proceeding provided an

exhibit which costed out the firefighters' contract and one of its witnesses testified that removal of the overtime cap would lead to "a very modest monetary increase."

4. There is no indication that the Association in said proceeding was ever prevented from rebutting said claim through its own documentation or witnesses, and there likewise is no indication that the City in said proceeding ever knowingly offered any misleading data.

5. Arbitrator Kerkman issued his Award on November 3, 1988 where he selected the City's final offer. In doing so, he discussed the firefighters' contract without commenting on whether or not the removal of the overtime cap would generate any extra money.

6. Neither the City nor the Association has attempted to overturn or vacate the Kerkman Award in court and neither has asked Arbitrator Kerkman to modify or correct his Award.

CONCLUSION OF LAW

Since it was incumbent upon the Association in the interest-arbitration proceeding before Arbitrator Kerkman to correct any misleading data offered by the City, and since the Association was accorded the opportunity to do so before said record was closed but failed to do so, it must be concluded that the complaint fails to allege facts upon which relief could be granted under Sec. 111.70(3)(a)(4) Wis. Stats.

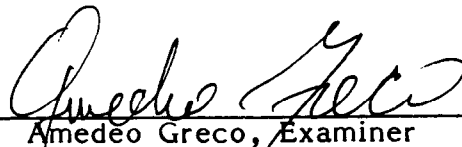
Upon the basis of the foregoing Findings of Fact and Conclusion of Law, the Examiner makes and issues the following

ORDER 1/

The City's Motion to Dismiss is hereby granted and the instant complaint is hereby dismissed in its entirety.

Dated at Madison, Wisconsin this 20th day of June, 1989.

By


Amedeo Greco, Examiner

1/ 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 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.

CITY OF MILWAUKEE (POLICE DEPARTMENT)

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER GRANTING MOTION TO DISMISS

The Association asserts that the City offered misleading costing data in the arbitration proceeding before Arbitrator Kerkman by failing to reveal the true costs generated by removing the firefighter's overtime cap. Since the City's case was predicated on its claim that its proposed economic package to the Association was identical to the one it had earlier successfully negotiated with the firefighters' union, the Association asserts that said offer also should have included the exact amount of money the City would be paying as a result of the caps' removal. As a remedy, the Association requests a cease and desist order which prohibits the City from engaging in bad faith bargaining; it is not seeking to overturn Arbitrator Kerkman's Award in this proceeding.

The City, in turn, maintains that its Motion to Dismiss should be granted because the complaint fails to state a cause of action and because the Association is really trying to attack the validity of the Kerkman Award---something it can only do in court pursuant to Section 111.70(JM), Wis. Stats.

Assuming arguendo that the caps' removal did generate more money than that claimed by the City, the fact remains that the Association had ample opportunity to challenge said data in the lengthy proceeding before Arbitrator Kerkman and that it failed to do so. Absent any proof that the City deliberately attempted to use misleading data, and absent any indication that the Association was precluded from rebutting same, and given the fact that interest-arbitration disputes often involve the use of conflicting economic data which the parties themselves are responsible for sorting out, it must be concluded that there is no basis to support the Association's refusal to bargain allegation, when the Association itself has otherwise accepted the Kerkman Award.

Hence, the City's motion is granted.

Dated at Madison, Wisconsin this 20th day of June, 1989.

By 
Amedeo Greco, Examiner