

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
MILWAUKEE DISTRICT	:	
COUNCIL 48, AMERICAN	:	
FEDERATION OF STATE, COUNTY	:	Case 337
& MUNICIPAL EMPLOYEES,	:	No. 41947 DR(M)-459
AFL-CIO	:	Decision No. 26058
	:	
Requesting a Declaratory Ruling	:	
Pursuant to Sec. 111.70(4)(b),	:	
Stats., Involving a Dispute	:	
Between Said Petitioner and	:	
	:	
CITY OF MILWAUKEE	:	
	:	

Appearances:

Podell, Ugent & Cross, S.C., Attorneys at Law, by Ms. Nola J. Hitchcock Cross, Suite 315, 207 East Michigan Street, Milwaukee, Wisconsin, 53202-4905, for the Union.

Mr. Thomas C. Goeldner, Assistant City Attorney, 800 City Hall, 200 East Wells Street, Milwaukee, Wisconsin, 53202-3551, for the City.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECLARATORY RULING

Milwaukee District Council 48, American Federation of State, County & Municipal Employees, AFL-CIO, having on March 22, 1989 filed a petition with the Wisconsin Employment Relations Commission pursuant to Sec. 111.70(4)(b), Stats. seeking a declaratory ruling as to whether certain provisions of a collective bargaining agreement between Milwaukee District Council 48 and the City of Milwaukee are mandatory subjects of bargaining; and the parties having filed written argument as to said petition, the last of which was received on May 16, 1989; and the parties having advised the Commission by letter received May 18, 1989 that the record should be closed; and the Commission having considered the matter and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Milwaukee District Council 48, American Federation of State, County & Municipal Employees, AFL-CIO, herein the Union, is a labor organization which functions as the collective bargaining representative of certain employes of the City of Milwaukee, and has its principal offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin 53208.
2. That the City of Milwaukee, herein the City, is a municipal employer having its principal offices at 200 East Wells Street, Milwaukee, Wisconsin 53202.
3. That the Union filed the instant petition for declaratory ruling asserting that the following underlined portions of a collective bargaining agreement between the Union and the City are permissive subjects of bargaining:

Section 18.3 Upon a reduction in supervisory and/or managerial positions, a supervisory or managerial employee affected may be returned to a job title they previously held in a bargaining unit. An employee promoted to a management or supervisory position after May 15, 1973, from a position within the certified bargaining unit, shall continue to accumulate seniority for not more than a maximum period of two calendar years. Thereafter, they shall retain, but not continue to accumulate, seniority while in a management or supervisory position. For an employee promoted prior to

May 15, 1973, the employee would receive their seniority as a member of the bargaining unit plus their seniority as a management or supervisory employee of the City for not less than two years if earned, or a period equal to one-half of their seniority as a managerial or supervisory employee in excess of two years up to a maximum of eight (8) years.

. . .

Section 18.8 The following changes in the foregoing seniority rules will apply to the Department of Public Works Personnel who are:

- A. Members of the bargaining unit represented by District Council #48 as finally determined by any proceedings of the WERC filed prior to December 31, 1970, and still pending, and
- B. To members of other unions when the Union elects to participate under terms of agreements which contain the exact provisions hereof.

4. That in its written response to the Union petition, the City concurred with the Union's assertion that the underlined portion of Section 18.18b is permissive.

5. That the disputed portion of Section 18.3 establishes the rights of individuals who are not within the bargaining unit represented by the Union.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That there is no dispute within the meaning of Sec. 111.70(4)(b), Stats. between the City and the Union as to their duty to bargain over the underlined portion of Section 18.18b set forth in Finding of Fact 3.

2. That the disputed portion of Section 18.3 set forth in Finding of Fact 3 is not a mandatory subject of bargaining within the meaning of Sec. 111.70(1)(a), Stats.

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

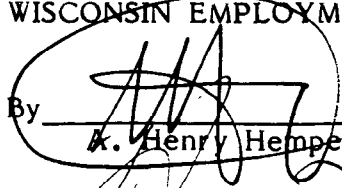
DECLARATORY RULING 1/

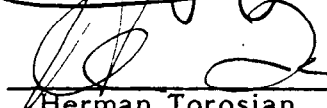
That the Union and the City have no duty to bargain within the meaning of Sec. 111.70(3)(a)4, Stats. over the disputed portion of Section 18.3.

Given under our hands and seal at the City of Madison, Wisconsin this 16th day of June, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


A. Henry Hempe, Chairman


Herman Torosian, Commissioner


S. H. Schoenfeld, Commissioner

(Footnote 1/ appears on page 3.)

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

CITY OF MILWAUKEE

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECLARATORY RULING

POSITIONS OF THE PARTIES

Citing City of Green Bay, Dec. No. 12402-B (WERC, 1/75); Oconto County, Dec. No. 12970-A (WERC, 3/75); City of Sheboygan, Dec. No. 19421 (WERC, 3/82); and City of Madison, Dec. No. 16590 (WERC, 10/78), the Union contends that the disputed portion of Sec. 18.3 is not a mandatory subject of bargaining because the language applies to individuals outside the Union's bargaining unit. The Union urges the Commission to reject the City's contention that because the provision impacts upon unit members' job security, the language is mandatory. The Union observes that because virtually any subject the parties may wish to bargain over will have some impact on unit members, the theoretical basis for the City's position is not particularly persuasive.

The City urges the Commission to find the disputed language to be a mandatory subject of bargaining because of the impact which the provision has upon unit members' job security. The City notes that when supervisory or managerial individuals exercise the seniority rights acquired through the undisputed portion of Section 18.3 and "bump" back to the bargaining unit under the disputed portion of Section 18.3, a layoff of a unit member may well occur. In the City's view, this impact upon unit members warrants the conclusion that the language primarily relates to conditions of employment and is a mandatory subject of bargaining.

DISCUSSION

It is fundamental to the concept of collective bargaining under the Municipal Employment Relations Act that the duty to bargain exists only as to "wages, hours and conditions of employment" of employes within the bargaining unit represented by the union.

Section 111.70(1)(a), Stats., defines collective bargaining, in pertinent part, as

"the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employe to meet and confer at reasonable times, in good faith, with respect to wages, hours and conditions of employment. . ." (emphasis added)

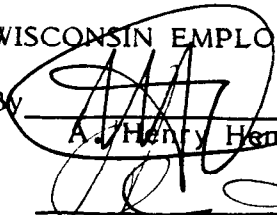
Section 111.70(3)(a)4, Stats. describes municipal employers' duty as being "to bargain collectively with the representative of a majority of its employes in an appropriate collective bargaining unit. (emphasis added). Section 111.70(4)(b), Stats., describes the declaratory ruling process as the resolution of disputes "between a municipal employer and a union of its employes" (emphasis added). Consistent with the foregoing statutory provisions, we have held that contractual provisions or proposals are not mandatory subjects of bargaining if they relate to individuals who are not in the bargaining unit represented by the labor organization. City of Madison, supra.; School District of Wisconsin Rapids, Dec. No. 17877 (WERC, 6/80) aff'd Dec. No. 80-C1-848 (Cir. Ct., Wood, 5/81); City of Milwaukee, Dec. No. 19091 (WERC, 10/81); City of Sheboygan, supra.

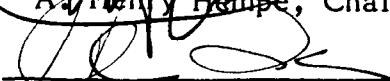
Here, the proposal before us deals with the "bumping" rights of individuals who are not in the Union's bargaining unit. Therefore, consistent with applicable law and prior precedent, we conclude that the proposal is not a mandatory subject of bargaining.

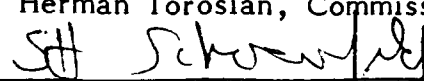
Dated at Madison, Wisconsin this 16th day of June, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


A. Henry Henpe, Chairman


Herman Torosian, Commissioner


S. H. Schoenfeld, Commissioner