

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
CITY OF MILWAUKEE	:	
To Initiate Final and Binding	:	Case 381
Arbitration Between Said	:	No. 46687 MIA-1669
Petitioner and	:	Decision No. 27151
MILWAUKEE POLICE ASSOCIATION,	:	
LOCAL #21, IUPA, AFL-CIO	:	
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ORDER DENYING MOTIONS AND  
AUTHORIZING INFORMAL INVESTIGATION

On December 11, 1991, the City of Milwaukee (City) filed with the Commission a petition for final and binding arbitration pursuant to Sec. 111.70(4)(jm), Stats. In that petition, the City asserts, among other things: that the City and Milwaukee Police Association (MPA) have reached a deadlock after a reasonable period of negotiation pursuant to a formal reopener clause contained in the parties' calendar 1991-92 collective bargaining agreement; that the parties' reopener clause provides,

ARTICLE 64  
DRUG TESTING

If the City chooses to modify its current drug testing practices, beyond that which is currently in effect, the parties will engage in collective bargaining as to those aspects of the modification which are primarily related to wages, hours and conditions of employment. In the event that the parties are unable to arrive at an agreement, those matters still in dispute will be submitted to final and binding arbitration before an arbitrator selected by the parties from a list provided by the Wisconsin Employment Relations Commission.

that the City notified MPA of its decision to modify its existing drug testing program; and that despite some seven negotiation sessions, the parties have been unable to agree "on the scope and format of an expanded drug testing program which includes but is not limited to random drug testing." On those bases, the City requested that the Commission conduct a hearing pursuant to Sec. 111.70(4)(jm)2, Stats., (if necessary) and, based on an impasse having been reached, that the Commission appoint an arbitrator to determine the terms of the collective bargaining agreement on which there is no agreement between the parties. The City further requested that the Commission provide the parties with a list arbitrators limited to Wisconsin residents with eight or more years of arbitration experience.

By letter filed December 30, 1991, MPA requested that the Commission dismiss or hold in abeyance the City's petition on the grounds that the requested arbitration proceeding would overlap and interfere with the parties' overall bargaining for a successor to the 1991-92 agreement, and that the Association has pending a prohibited practices complaint the results of which

will determine the nature and lawfulness of the City's status quo drug testing policy. At a minimum, MPA asserted that the Commission should conduct an investigation to determine whether the reopener negotiations have in fact reached an impasse. For its part, MPA proposed that any arbitrator list supplied to the parties consist exclusively of attorneys but not be limited only to Wisconsin residents.

In its letter response filed on January 14, the City: took issue with the MPA's asserted grounds for dismissing or holding the petition in abeyance; stated that it has no objection to, but sees no need for, a promptly-scheduled informal investigatory meeting to establish that the parties are at an impasse; and stated that if the parties could not agree on criteria for creation of a special arbitrator list, then the City would not object to the Commission developing the list in this case in accordance with its established policy.

The Commission has considered the petition and the above-noted correspondence concerning it. The Commission is satisfied that: the pendency of a prohibited practice complaint proceeding cannot delay or terminate the processing of a Sec. 111.70(4)(jm) arbitration petition; the possible overlap in time between negotiations/arbitration pursuant to the parties' reopener clause and negotiations concerning an overall successor agreement does not defeat the City's right to separately arbitrate an impasse arising out of reopener clause negotiations; that an informal investigation would be the most appropriate means of determining whether the parties have reached an impasse subject to Sec. 111.70(4)(jm) arbitration in this matter; and that, if an order initiating arbitration is ultimately issued herein, the Commission would consider reasonable mutually agreed-upon arbitrator selection procedures, but if the parties do not mutually agree on any such procedures, the Commission intends to provide the parties with a list of five arbitrators drawn at random from the Commission's list of ad hoc arbitrators, without limitations as to occupation or state of residence, but with City of Milwaukee resident arbitrators excluded as is specifically required by Sec. 111.70(4)(jm)2, Stats.

The Commission therefore issues the following

ORDER

1. MPA's motions to dismiss or hold the instant petition in abeyance are denied.

2. An informal investigation shall be conducted for the purpose of determining whether the statutory conditions precedent to the issuance of an order initiating Sec. 111.70(4)(jm), Stats., arbitration have been met.

Given under our hands and seal at the City of  
Madison, Wisconsin this 6th day of February,  
1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
A. Henry Hempe, Chairperson

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner