

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SERVICE EMPLOYEES INTERNATIONAL :
UNION, LOCAL 150, :
Complainant, : Case 3
vs. : No. 49113 MP-2720
VILLAGE OF STODDARD, : Decision No. 27970-A
Respondent. :

Appearances:

Mr. John Wittenberg, Business Representative, Local 150, Service & Hospital Employees International Union, AFL-CIO, 910 Brickl Road, West Salem, Wisconsin 54669, appearing on behalf of the Union.
Sauer, Becker, Flanagan & Lynch, Ltd., Attorneys at Law, by Mr. John P. Stuber, 401 Main Street, #500, P. O. Box 2047, LaCrosse, Wisconsin 54602, appearing on behalf of the Village.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Service Employees International Union, Local 150, filed a complaint with the Wisconsin Employment Relations Commission on March 15, 1993, and an amended complaint on April 22, 1993, alleging that the Village of Stoddard had committed prohibited practices within the meaning of Secs. 111.70(3)(a)1 and 4 of the Municipal Employment Relations Act. On February 28, 1994, the Commission appointed Lionel L. Crowley, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Sec. 111.07(5), Stats. Hearing on the amended complaint was held on April 7, 1994, in Stoddard, Wisconsin. The Union made an oral argument at the conclusion of the hearing and the Village filed a written brief which was received on May 16, 1994, at which point the record was closed. The Examiner, having considered the evidence and the arguments of counsel, makes and issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. Service Employees International Union, Local 150, hereinafter referred to as the Union, is a labor organization within the meaning of Sec. 111.70(1)(h), Stats., and its offices are c/o John Wittenberg, 910 Brickl Road, West Salem, Wisconsin 54669.

2. Village of Stoddard, hereinafter referred to as the Village, is a municipal employer within the meaning of Sec. 111.70(1)(j), Stats., and its principal offices are located at 180 North Main Street, Stoddard, Wisconsin 54658.

3. Pursuant to an election conducted by it, the Commission certified the Union as the exclusive bargaining representative of the following bargaining unit:

All regular full-time and regular part-time employees of the Village, excluding supervisory, managerial, confidential, casual, seasonal and all employees with the power of arrest. (Village of Stoddard, Dec. No. 27358-A, WERC, 10/92)

4. The Village and the Union entered into negotiations for their first collective bargaining agreement but have not yet reached an agreement.

5. On February 2, 1993, at a regular Village Board meeting, the Village Board decided to immediately purchase a time clock. By a letter to the Village dated February 5, 1993, the Union stated as follows:

It has come to our attention that the Village of Stoddard is contemplating the implementation of a time clock for its workers.

Let me remind you that these employees are certified under the Wisconsin Employment Relations Commission to be represented by Service Employees International Union, Local 150. A time clock falls under wages, hours and working conditions. The Union will file an unfair labor practice if the time clock is implemented without first bargaining with this Union.

The Village apparently did not respond to the Union's letter.

6. The time clock was installed and beginning on March 18, 1993, employees were required to use it. The employees, prior to the installation of the time clock, filled out a written time sheet with the hours worked each day and the work hours broken down for Street, Shop, Snow Removal, Water and Sewer.

7. At all times material herein, the Village has refused to bargain collectively with the Union over its unilateral decision to install the time clock and its use by employees as well as the impact of said decision.

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

CONCLUSION OF LAW

The Village, by its installation of the time clock and its required use and its refusal to bargain over same with the Union upon timely request, has violated its duty to bargain within the meaning of Sec. 111.70(3)(a)4, Stats., and derivatively, of Sec. 111.70(3)(a)1, Stats.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes and issues the following

ORDER 1/

IT IS ORDERED that the Village of Stoddard, its officers and agents, shall immediately:

1. Cease and desist from:

- (a) Requiring the use of the time clock.
- (b) Refusing to bargain in good faith with the Union with respect to the decision to install the time clock as well as the use thereof by bargaining unit employees.

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.

This decision was placed in the mail on the date of issuance (i.e. the date appearing immediately above the Examiner's signature).

2. Take the following affirmative action which the Examiner finds will effectuate the policies of the Municipal Employment Relations Act:

- (a) Immediately return to the status quo ante by not requiring the use of the time clock by bargaining unit employes.
- (b) Bargain in good faith with the Union over the use of the time clock and not implement its use until agreement is reached with the Union.
- (c) Notify all of its employes by posting, in conspicuous places on its premises where employes are employed, copies of the notice attached hereto and marked "Appendix A." That notice shall be signed by the official of the Village and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for thirty (30) days thereafter. Reasonable steps shall be taken to ensure that said notices are not altered, defaced or covered by other material.
- (d) Notify the Wisconsin Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin, this 30th day of June, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley /s/
Lionel L. Crowley, Examiner

"APPENDIX A"

NOTICE TO ALL EMPLOYEES

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Municipal Employment Relations Act, we hereby notify our employees that:

1. WE HAVE canceled the use of the time clock.
2. WE WILL bargain to agreement with respect to the use of the time clock with Service Employees International Union, Local 150.
3. WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the exercise of their rights assured by the Municipal Employment Relations Act.

By _____ Date
Village of Stoddard

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS FROM THE DATE HEREOF AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

VILLAGE OF STODDARD

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

In its complaint, as amended, initiating these proceedings, the Union alleged that the Village had committed prohibited practices by changing its sick leave usage policy and unilaterally installing and requiring the use of a time clock. At the hearing, the Union informed the Examiner that the sick leave usage issue had been resolved (Tr. 5). Thus, the only issue remaining for determination was the use of the time clock. The Village answered the complaint, as amended, admitting that it installed a time clock and required the unit members to use it but denied that it had committed any prohibited practice.

POSITIONS OF THE PARTIES

Union's Position

The Union submits that it was certified as the employees' collective bargaining representative on October 19, 1992, and had a number of bargaining sessions with the Village from November 2, 1992 until February 2, 1993, and that at no time during this period did the Village notify or propose a change in how employees kept track of their time during the work day. The Union points out on February 2, 1993, the Village Board took action to purchase a time clock and on February 5, 1993, the Union requested to bargain over the time clock. The Union notes that the Village required the use of the time clock commencing on March 18, 1993, and by doing so unilaterally changed the terms and conditions of employees by requiring the use of the time clock, a procedure never previously utilized by the Village. The Union alleges that there was no negotiated agreement on the time clock and it requests a finding that the Village committed prohibited practices as well as a cease and desist order and such other relief as the Commission deems just and proper.

Village's Position

The Village contends that the evidence presented very little indication, if any, that there had been an impact on wages, hours or conditions of employment as a result of the institution of the time clock. It submits that prior to the installation of the time clock, employees used a handwritten time sheet. It claims that there was no change in the amount of compensation paid nor was there a change in any past practice with respect to the time keeping. It alleges that the record does not show anything other than a minimal impact.

The Village refers to Sec. 111.70(1)(d), Stats., asserting that it is not required to bargain on subjects reserved to management. The Village maintains that it has simply substituted a mechanical method for a handwritten one with no impact of legal significance on wages, hours and conditions of employment. It relies on Rust Craft Broadcasting of New York, Inc., 225 NLRB 327 (1976) as supporting its position that the installation of the time clock is not a mandatory subject of bargaining. It asks that the Examiner find that where the evidence fails to show any change from the prior practice and only minimal impact in changing from a handwritten to a mechanical system, that this is not a matter of mandatory bargaining.

DISCUSSION

Section 111.70(3)(a)4, Stats., provides that it is a prohibited practice for a municipal employer to refuse to bargain collectively with the employees' collective bargaining representative. Section 111.70(1)(a) defines "collective bargaining" as the mutual obligation of the parties to meet and confer at reasonable times, in good faith, with the intention of reaching an agreement with respect to wages, hours and conditions of employment; however, the employer is not required to bargain on subjects reserved to management and the direction of the governmental unit. Here, the Union contends the installation of the time clock is a mandatory subject of bargaining, whereas the Village takes the opposite position and claims it is not mandatory.

An Employer's unilateral installation of a time clock and requiring employees to use it may or may not be a mandatory subject of bargaining depending on the facts of the case. As noted by the Village, in Rust Craft Broadcasting of New York, Inc., 225 NLRB 327 (1976), where a time clock requirement was merely a change to a mechanical procedure for recording time and was not a material, substantial or significant change from prior practice, there was no violation of the duty to bargain. Additionally, where employees received the correct pay, and the new time clock policy did not reflect adversely on employees or have a deleterious effect on working conditions, there was no violation. 2/ On the other hand, where the employer questioned whether employees were actually working the hours assigned and installed a time clock to insure compensation for actual hours worked, the installation of the time clock was held to be a mandatory subject of bargaining. 3/

A review of the record in this case is necessary to determine whether the time clock installation is mandatory or not. A review of the prior time sheet indicates that it does not contain start and stop time entries but is concerned only with hours and their division between various types of work. 4/ Village President, Gary R. Brosinski, testified that the Village decided to install the time clock simply as a matter of verification. 5/ He testified that the maintenance supervisor was checking the well from his house and the Village

2/ Care Ambulance d/b/a American Ambulance, 255 NLRB 417 (1981).

3/ Village of Sturtevant (Police Department), Dec. No. 19543-A (Schiavoni, 2/83) aff'd by operation of law, Dec. No. 19543-B (WERC, 3/83).

4/ Ex. 6.

5/ Tr. 13.

wanted him to use the Village truck instead of his personal vehicle. 6/ Also, Village residents questioned whether employes were working the proper hours and why their vehicles were home. 7/ There were concerns about insurance coverage but it is difficult to determine how installation of a time clock would change this. The employe could punch the time clock and use his/her own vehicle and insurance problems would still be present. The most significant factor in deciding whether the time clock installation was a mandatory subject or not was Brosinski's testimony that:

6/ Tr. 12.

7/ Tr. 13.

By the use of the time clock we knew that they were beginning their work day at the scheduled hour and punching out at the end of the day. Where on the work sheet there is just the hours, and they could have started at 7:15 and/or 6:45 and left at 3. 8/

The evidence establishes that the installation of the time clock had more implications than a mere change from a handwritten to a mechanical procedure for recording time. The Village was questioning whether employees were working eight hours a day and the exact times they started and ended the day. It appears that some past flexibility was now modified, and on balance, the undersigned concludes that this case more closely resembles the facts in the Village of Sturtevant, supra. Thus, the undersigned finds that the Village's installation of the time clock and its required use is a mandatory subject of bargaining and the Village's refusal to negotiate over it prior to its installation and use violated its duty to bargain, and derivatively, violated Sec. 111.70(3)(a)1, Stats. The remedy for this violation is to return to the status quo ante and to bargain over the time clock before its implementation. The standard posting and notice to the Commission has also been ordered.

Dated at Madison, Wisconsin, this 30th day of June, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley /s/
Lionel L. Crowley, Examiner

8/ Tr. 16.

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