STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE POLICE ASSOCIATION, Complainant,

vs.

CITY OF MILWAUKEE; ARTHUR L. JONES, CHIEF OF POLICE; WILLIAM GIELOW, INSPECTOR OF POLICE, Respondents.

Case 440
No. 55464
MP-3329

Decision No. 29198-A

Appearances:

Eggert Law Offices, S.C., by **Ms. Laurie A. Eggert**, on behalf of the Complainant.

Mr. Thomas J. Beamish, Assistant City Attorney, on behalf of the Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Amedeo Greco, Hearing Examiner: Complainant Milwaukee Police Association ("Association"), filed a prohibited practices complaint with the Wisconsin Employment Relations Commission ("Commission"), on August 13, 1997, alleging, *inter alia*, that the City of Milwaukee, Chief of Police Arthur Jones, and then-Inspector of Police William Gielow ("Respondents" or "City"), had committed prohibited practices within the meaning of the Municipal Employment Relations Act ("MERA"), by violating the parties' collective bargaining agreement and by refusing to bargain over certain changes in how police officers take their paid lunch breaks.

The Commission on September 26, 1997, appointed the undersigned to issue and make Findings of Fact, Conclusions of Law and Order as provided for in Section 111.07(5), Wis. Stats. The City filed its answer on November 21, 1997.

Hearing was held in Milwaukee, Wisconsin, on March 27, 1998, and April 28, 1998. There, the Association dropped its complaint allegations relating to changes in the City's sick leave practices after it and the City agreed to refer said dispute to final and binding arbitration. The parties subsequently filed briefs and reply briefs that were received by June 15, 1998.

Having considered the arguments and the record, I make and file the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Association, a labor organization, maintains its principal offices at 1840 North Farwell Avenue, Suite 400, Milwaukee, Wisconsin 53202. At all times material herein, Bradley DeBraska has served as its President.

2. The City of Milwaukee ("City"), a municipal employer, maintains its principal offices at 200 East Wells Street, Milwaukee, Wisconsin 53202. At all times material herein, it has maintained a police department which provides law enforcement services. Arthur L. Jones is Chief of Police and William Gielow is Deputy Chief. At all times material herein, they have acted on the City's behalf and they have served as the City's agents.

3. The Association for a number of years has served as the certified collective bargaining representative for certain non-supervisory law enforcement employes employed in the Milwaukee Police Department.

4. The Association and the City are parties to a collective bargaining agreement that provides in Article 30, entitled "Paid Lunch": "Present practices are continued for the duration of this Agreement. Article 60 of said contract, entitled "Aid to Construction of Provisions of Agreement", provides, in pertinent part:

> "5. During the term of this Agreement prior to the establishment of new rules or regulations, or changes in existing rules or regulations that do not fall within the City's unfettered management functions, the Association shall be afforded the opportunity to negotiate with the Chief of Police as follows. . . ."

5. Said Agreement also states in Article 5, "Management Rights":

1. The Association recognizes the right of the City, the Chief of Police and the Board of Police and Fire Commissioners to operate and manage their affairs in all respects in accordance with the laws of Wisconsin, ordinances of the City, Constitution of the United States and Section 111.70 of the Wisconsin Statutes. The Association recognizes the exclusive right of the Board of Fire and Police Commissioners and/or the Chief of Police to establish and maintain departmental rules and procedures for the administration of the Police Department during the term of this Agreement provided that such rules and procedures do not violate any of the provisions of this Agreement.

• • •

5. The City shall determine work schedules and establish methods and processes by which such work is performed.

• • •

7. Except as otherwise specifically provided in this Agreement, the City, the Chief of Police and the Fire and Police Commission shall retain all rights and authority to which they are entitled.

• • •

11. The Association pledges cooperation to the increasing of departmental efficiency and effectiveness. Any and all rights concerning the management and direction of the Police Department and the police force shall be exclusively the right of the City unless otherwise provided by the terms of this Agreement as permitted by law.

6. Deputy Chief Gielow by memorandum dated June 2, 1997, informed all District Captains:

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THE FOLLOWING INFORMATION IS BEING DISSEMINATED AS A RESULT OF THE MORNING BRIEFING OF MONDAY, JUNE 2, 1997. MOST, IF NOT ALL OF THIS INFORMATION WILL BE DELIVERED AT THE COMMAND STAFF MEETING OF JUNE 3, 1997. HOWEVER THESE INSTRUCTIONS ARE TO TAKE EFFECT IMMEDIATELY.

> 1. SQUADS ARE NOT TO GO INTO THE DISTRICT STATION TO EAT UNLESS THEY ARE IN THE STATION WRITING UP A PRISONER. EATING IS TO BE DONE IN ASSIGNED SQUAD AREAS. SQUADS WILL INFORM THE DISPATCHER AS ALWAYS WHEN THEY ARE REQUESTING A "20" FOR LUNCH. SQUADS ARE KEPT IN 10-11 (IN SERVICE-SUBJECT TO CALL) WHEN EATING.
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> . . .
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> 7. Gielow by memorandum dated June 3, 1997, informed all District Commanders:
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> . . .
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> Squads are not to go into the district stations to eat unless they are in the station writing up a prisoner or tending to other essential police business. Eating is to be done in assigned squad areas. Squads will inform the dispatcher, as always, when they are requesting a "20" for lunch. Squads are to be kept "10-11" (in service-subject to call) when eating.
>
> . . .

8. Prior to the issuance of said memos, some patrol areas in the City of Milwaukee were left unattended for up to an hour because police officers drove to and from their district stations to have their 20-minute paid lunch break.

9. Pursuant to said memos, police officers since that time have regularly eaten in their patrol areas except for certain situations such as bringing a prisoner into the seven district stations, at which time officers are allowed to eat in district stations.

10. Association Secretary/Treasurer Patrick Doyle by letter dated July 8, 1997, informed Chief Jones:

> On June 2, 1997 Inspector William Gielow issued an order that squads are not to go into the District Station to eat unless they are in the station writing up a prisoner. The order also stated that eating is to be done in assigned squad areas. The order is in violation of ARTICLE 30 PAID LUNCH, of the current labor agreement between the City of Milwaukee and the Milwaukee Police Association. The Milwaukee Police Association requests that this order be rescinded.

. . .

The Association should have been afforded the opportunity to negotiate these changes prior to implementation, consistent with ARTICLE 60 of the current labor agreement and requests to do so at a mutually agreeable time, if you choose not to rescind these orders.

11. Chief Jones by letter dated July 16, 1997, informed Doyle:

RE: LUNCH PERIOD/SICK LEAVE MANAGEMENT PROGRAM MATTERS

Dear Mr. Doyle:

In correspondence dated July 8, 1997, (copy attached for reference) you asked that two orders pertaining to the above-captioned matters be rescinded, and that the provisions of Article 60 of the effective City/MPA labor contract (rule negotiating process) be complied with. Please be advised that I will not rescind these orders as they are not violative of the labor contract. The provisions of Article 60 are inapplicable because issuance of the two orders neither establishes a new rule provision, nor modifies an existing one; and, the subject matter of the order falls within my unfettered management function, as permitted by the labor contract.

. . .

12. Jones was asked about this lunch issue in a November 13, 1997, interview on a local radio station with radio host Charles Sykes. The transcript of said interview states in pertinent part:

. . .

SYKES: All right, I want to ask you about the lunch issue.

JONES: Okay.

SYKES: A lot of officers are very upset you came up down with a new ruling essentially saying that officers had to stay in their patrol districts they couldn't go out of their patrol areas to eat, they can't eat at thee, uh, station house. Um, was that, was that, given the impact it had on. . .

JONES: That was Bradley DeBraska's propaganda. I issued, on June 6, let me, let me just back up. In 1991 I was a Captain at District 7, I came into the district one day and every squad in the district was in the district eating lunch except one. Every squad was in the district eating lunch except one. When I was a field deputy inspector I would see six to seven to eight, nine squads in the district eating lunch. Now these same squads would stop at the fast food restaurants or wherever they stopped to get the food, drive into the station, sit in the assembly, and eat the food and then obviously there would be, you'd commiserate with your friends for a few minutes and then you'd go back out on the street. We pay, the officers don't have, we pay the officers for eight hours of work. Out of that eight hours of work we allow 20 minutes of that eight hours for lunch. Um, my attempt is to have the officers on the street. I issued a directive June 3rd, not when Bradley DeBraska got on tv and said we have lunch rooms in every station which I invite people to stop in the station and see the lunch rooms that don't exist. But, at any rate, I've directed that the officers cannot eat in the station. Unless they are in the station with some other business, police business, ie an arrest, report writing, it's not that he cannot eat in the station but they cannot go into the station for the purpose of eating. I did not direct, and there is no directive currently that the officers have, cannot leave their squad areas, to, to go to a restaurant, that is not true, and anybody that told you that that's true, that is not the case. The officers cannot leave the district to go eat but they never could, they never could leave the district in which they were assigned.

SYKES: So you're saying the only major change was saying you can't come back to the station house to eat.

JONES: That's, that's correct.

SYKES: All right.

JONES: That's the directive, that's the truth and I defy any officer or union official to say differently.

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13. The question of paid lunch breaks dates back to at least 1969 when the Association in a February 11, 1969, letter informed James J. Mortier, the City's then-Chief Labor Negotiator, that it was submitting the following contract proposal:

• • •

> 4. That the proposed contract tendered by the City of Milwaukee includes specific reference to the extending of the present paid lunch benefits to members of the Police Department. The agreement tendered by the City is silent on this point, although the Memorandum of Understanding entered into by the parties did in fact state that the existing benefits be extended to the employes.

• • •

The Association and the City subsequently bargained over said issue with the City submitting a contract proposal on June 30, 1970, that stated:

• • •

> "Paid Lunch
>
> "The City proposes to retain its present policy of 20 minutes, paid lunch. However, the City proposes to eliminate paid roll-call. (Paid lunch time was formerly granted in lieu of roll-call time."

• • •

14. Josef S. Ellis, now retired, also represented the City in said negotiations and later served as the Personnel Director for the Milwaukee Police Department from 1989 to the time of his retirement. He testified without contradiction that at no time during said 1969-1970 contract negotiations did the Association ever propose - and/or did the City ever agree - that police officers would be allowed to take their paid lunch breaks in district station houses or in any other specific locations, as said subject never arose in negotiations. There was a mixed practice at that time as to where police officers took their paid lunch breaks, with some officers regularly eating in their station houses and others eating in their squad areas. The Association at that time sought contract language guaranteeing paid lunch time because it was concerned that the City might not pay for such paid lunch time in retaliation for the Association successfully complaining over the City's failure to pay officers for the time they spent on roll call. Ellis added that the parties at that time agreed to the language now found in Article 30 of the contract.

15. This subject also arose in the negotiations for a successor contract to the 1969-1970 contract, at which time the Association attempted to increase the length of the paid lunch break from 20 to 30 minutes and at which time the City proposed that "present benefits" be maintained. The Association subsequently withdrew said proposal and Arbitrator Thomas P. Whelan on November 2, 1971, issued a Fact Finding Report relating to said negotiations wherein he stated in pertinent part that the parties' contract should retain the following provision: "Paid Lunch. Present benefits are continued for the duration of this Contract." Police officers ever since that time have continued to receive a 20-minute paid lunch break.

16. The Association at no time from 1971 to the present has ever tried to change said contract language by proposing in contract negotiations that police officers are free to take their paid lunch breaks in district station houses or in any other designated locations and the City at no time from 1971 to the present has ever agreed in contract negotiations that police officers are free to take their paid lunch breaks in district station houses or in any other designated locations. Chief Howard Breier was the Chief of the Police Department up to 1984, during which time he protected his right to assign police officers to take their paid lunch breaks wherever he wanted them to.

17. There has been a mixed practice ever since 1971 of where police officers take their 20-minute paid lunch break. Some officers have regularly eaten in their district station houses and other officers have not. The 20-minute paid lunch break did not encompass the time it took officers to drive either to or from their district stations. In some cases, officers would be out of their patrol areas for up to an hour as they drove to and from their district stations.

18. There are no City documents stating that police officers are free to take their 20-minute paid lunch breaks in district stations.

19. The City's June, 1997, directives set forth above in Findings of Fact 6 and 7, supra, relating to where paid lunch breaks can be taken were based on the City's legitimate need to keep its officers in their patrol areas and to eliminate the driving time that police officers spent driving from their patrol areas to their district station houses and back. Said directives have increased the total amount of time that police officers remain in their patrol areas, thereby providing a more effective police presence. Said directives have not impacted on officer health or safety.

Upon the basis of the aforementioned Findings of Fact, I hereby make and issue the following

CONCLUSIONS OF LAW

1. Respondents City of Milwaukee, Chief of Police Arthur L. Jones, and Deputy Chief William Gielow did not violate the parties' collective bargaining agreement or Sec. 111.70(3)(a)(5),

of the Municipal Employment Relations Act when they issued orders in June, 1997, relating to where paid lunch breaks could be taken.

2. Respondents City of Milwaukee, Chief of Police Arthur L. Jones, and Deputy Chief William Gielow did not unlawfully refuse to bargain in violation of Sec. 111.70(3)(a)(4) of the Municipal Employment Relations Act when they refused to bargain with the Association over the City's June, 1997 orders relating to where paid lunch breaks could be taken.

Upon the basis of the aforementioned Findings of Fact and Conclusions of Law, I hereby make the following

ORDER

IT IS ORDERED that the complaint allegations be, and they hereby are, dismissed in their entirety.

Dated at Madison, Wisconsin this 17th day of August, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Amedeo Greco /s/
Amedeo Greco, Examiner

CITY OF MILWAUKEE (POLICE DEPARTMENT)

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

POSITIONS OF THE PARTIES

The Association asserts that the City violated Article 30 and Article 60 of the contract by unilaterally issuing and implementing "the Gielow memo prohibiting officers from eating lunch in the district station unless they were in the station writing up a prisoner." It thus argues that Article 30 "refers to practices that were in effect on the day. . ." the contract was signed; that the Gielow memo marks a "change" from prior practices; that each of its witnesses testified to that effect; that pertinent exhibits are consistent with its claim; that "Article 30 is not limited to a guarantee that lunch will be 20 minutes long and will be paid"; and that the lunch practices in 1971-1972 support its position. In support of this claim, the Association relies upon IN RE: CITY OF GREENFIELD AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 695, 77 LA 8 (Yaffe, 1981). Alternatively, the Association argues that even if there is no binding past practice, the City nevertheless "was required to bargain with [it] prior to changing the existing practices" pursuant to BELOIT EDUCATION ASSOCIATION V. WERC, 73 Wis. 2d. 43, 242 N.W. 2d. 331 (1976).

The City, in turn, maintains that the Association has "failed to meet its burden of establishing a violation of Sec. 111.70(3)(a)(5) . . ." because there was no fixed practice relating to where lunch could be taken at the time Article 30 first came into the contract and because the record fails to establish that "the parties changed the meaning of 'present practices' as that term was used in 1970 by addressing other aspects of lunch in later bargaining sessions." The City also contends that it did not unlawfully refuse to bargain in violation of Sec. 111.70(3)(a)4 because Chief Jones under the contract and applicable law had no duty to bargain over his June, 1997, decision "to utilize more effectively Police Department resources."

DISCUSSION

This case largely turns on whether the contract preserves the "practices" claimed by the Association and whether the contract and applicable law relieve the City from bargaining with the Association over where paid lunch breaks can be taken.

As related in Finding of Fact 4, supra, Article 30, states: "Present practices are continued for the duration of this Agreement." Since nothing else in the contract describes

what those "present practices" are, the contract is ambiguous on this issue. It therefore is necessary to consider parol evidence to ascertain what the parties meant when this term was first placed in the parties' contract.

As to that, former City negotiator Ellis, who participated in said negotiations, testified without contradiction that Article 30 found its way into the contract because, in his words:

> "There was a concern on the part of – And this I'm just kind of going off the top of my head. There was a concern on the part of the City of just putting in the 20 minute paid lunch because as was pointed out to by, I believe at the time the department representative was Ferg Meyer, M-E-Y-E-R. He was the deputy inspector or the captain. I don't remember. That when a call occurs if an officer is eating lunch, he has to suspend that lunch and respond to a call in the middle of the lunch. And that's too bad. And we wanted to ensure that particular result.
>
> But the focus of the provision going into the contract in terms of what we talked about was that the boys, the union, wanted assurances that the City wasn't going to retaliate because of the roll call doing which cost the City something on the order of a half million bucks as I recall."

Ellis added: "after much battling back and forth, the parties agreed to a 20-minute lunch."

Ellis also testified without contradiction that the Association in said negotiations never proposed that officers could insist on having their paid lunch periods in district stations and that the City then never agreed to any such provision. Moreover, Ellis testified without contradiction that former Chief Howard Breier, who was Chief up until 1984, never would have agreed to any restriction on his right to assign officers to take their paid lunch breaks wherever he wanted them to because, in Ellis' words, "Breier. . . very zealously guarded his management rights." Ellis added that Breier in negotiations said "Mortier economics – Chief rules", which meant that while City negotiator Mortier could bargain over how long any paid lunch breaks would be, only he, Breier, could determine where they would be taken.

Since Ellis' testimony was unrebutted (no Association witnesses testified as to how Article 30 first came into the contract), and since Ellis testified in such a credible manner, I credit his testimony in its entirety. I therefore find that Article 30 was agreed to only in order to make sure that police officers continued to receive a paid 20-minute lunch break and that said agreement had absolutely nothing whatsoever to do with <u>where</u> such paid lunch breaks could be taken.

I also credit Ellis' additional testimony (again never challenged by the Association), that the Association never proposed in subsequent contract negotiations that paid lunch breaks could be

taken in district stations and that the City in subsequent negotiations never agreed to such a proposal.

Given Ellis' credited testimony, it must be concluded that bargaining history fully supports the City's assertion that Article 30 only guarantees a 20-minute paid lunch period and nothing more.

As for any past practices on this issue, Association witnesses John Eberhardy, Patrick Fortune, David Stott, Steven Lelinski, David Stelter, James Nisiewicz, Bradley DeBraska, and Patrick Doyle all testified in substance that they and/or their fellow police officers always took their paid lunch breaks in district stations. Their testimony, however, was contradicted by Deputy Chief Gielow, Assistant Chief of Police James Koleas, and Captain of Police Kenneth Meuler who all stated that that was not always the case and that police officers, in fact, did not have that right. This conflicting testimony indicates that any such practice was not as clear and/or as uniform as the Association now alleges. Moreover, Association Secretary/Treasurer Doyle himself admitted that Shift Commanders in the later 1980's and the early 1990's "Probably" directed officers to not eat in district stations unless they were on other official police business such as filling out reports or bringing in prisoners. Doyle's admission supports the City's position and undermines the Association's own claim.

In addition, there is no merit to the Association's additional claim that Gielow's Position Responsibility Order (4/090-00 (37)) and then-Deputy Inspector Jones' 1994 memo relating to when police dispatchers must be contacted (Union Exhibits 1 and 2), establish that lunch breaks must be taken in district stations. Instead, and as testified to by Gielow and Koleas whose testimony I fully credit, said documents only relate to how many officers can be on their paid lunch breaks without specifying where they are to do so.

However, some change has occurred because - as related in Finding of Fact 12, supra - Jones agreed in a radio interview that the only "major change" in the June, 1997, memos set forth in Findings of Fact 6 and 7 related to not returning to the station houses to eat. Gielow also admited that said memos also represented a change in where officers could take their paid lunch breaks.

Does this change, then, violate the City's obligation under Article 30 of the contract to maintain "Present practices" and its obligation under Article 60 to bargain with the Association over the "establishment of new rules and regulations that do not fall within the City's unfettered management functions. . ."?

I think not. Any changes here, after all, do not alter the fundamental points raised by the parties' bargaining history, i.e. that: (1), Article 30 found its way into the contract only in order to preserve the 20-minute paid lunch break and nothing more; (2), the Association has never proposed in contract negotiations that police officers have the right to eat in district stations; and, (3), the City in contract negotiations has never agreed to any such proposal. In other words, there never was any meeting of the minds between the parties to the effect that the phrase "Present practices" encompasses where police officers are to take their 20-minute paid lunch break.

Any practices that developed over the years on this issue thus were mere happenstance and not the result of any mutual agreement with the City to the effect that such practices had to continue over its objection.

This point – i.e. the difference between happenstance and convenient methods at the time versus mutual agreement – was addressed by Arbitrator Harry Schulman in FORD MOTOR CORP., 19 LA 237, 241-242 (1952), wherein he stated:

. . .

> "A practice thus based on mutual agreement may be subject to change only by mutual agreement. Its binding quality is due, however, not to the fact that it is a past practice but rather to the agreement in which it is based.
>
> But there are other practices which are not the result of joint determination at all. They may be mere happenstance, that is, methods that developed without design or deliberation. Or they may be choices by Management in the exercise of managerial discretion as to convenient methods at the time. In such cases there is no thought of obligation or commitment for the future. Such practices are merely present ways, not proscribed ways, of doing things. The relevant item of significance is not the nature of the particular method but the managerial freedom with respect to it. Being the product of managerial determination in its permitted discretion, such practices are, in the absence of contractual provisions to the contrary, subject to change in the same discretion. . . But there is no requirement of mutual agreement as a condition precedent to a change of a practice of this character.
>
> A contrary holding would place past practice on a par with written agreement and create the anomaly that, while the parties expend great energy and time in negotiating the details of the Agreement, they unknowingly and unintentionally commit themselves to unstated and perhaps more important matters which in the future may be found to have been past practice."

. . .

Applying this principle here, I conclude that the City was free under the contract to make the changes in issue because Article 5 of the contract, entitled "Management Rights", clearly gives the City the right to "establish methods and processes by which such work is performed." Here, the changes directly relate to the "methods and processes by which such work is performed" because they are aimed at guaranteeing that police officers remain in their patrol areas during their paid lunch time, and that they do not waste time driving to and from their district stations, thereby providing a greater police presence where it is best needed throughout the City of Milwaukee.

The City also was free to take said action because Article 5 adds: "The Association pledges cooperation to the increasing of departmental efficiency and effectiveness." That is exactly what the City has done here by reducing the prior downtime caused by officers driving to and from their district stations for their paid 20-minute lunch breaks, a process that in some cases took up to an hour because of the great distances between certain patrol areas and district stations. At such times, some patrol areas were left without any police presence whatsoever – a situation that is intolerable under a public safety point of view.

Moreover, Article 5 adds:

> "Any and all rights concerning the management and direction of the Police Department and the police force shall be exclusively the right of the City unless otherwise provided by the terms of this Agreement as permitted by law."

This explicit management rights proviso hence supersedes the more ambiguous "Present practices" proviso found in Article 30 and Article 60 which only requires the City to bargain over matters that are not within its management prerogatives.

Given all of the above, I find that the City has not violated the contract by telling its police officers out on patrol that they cannot have their paid lunch breaks in district stations.

The Association argues otherwise by citing IN RE: CITY OF GREENFIELD, supra, where Arbitrator Yaffe ruled that the employer violated the contract when it prohibited two police officers from having lunch at the same time in the same restaurant. That case, however, is distinguishable because Arbitrator Yaffe found that there was a past practice for at least 13 years showing that officers could take their paid lunch breaks together at the same restaurant.

Here, by contrast, the record is mixed as to whether a binding past practice has developed. Moreover, the bargaining history here establishes that Article 30 was only intended to provide for a paid 20-minute lunch break with no consideration whatsoever being given to where said paid lunch breaks were to be taken. Hence, Article 30 was never meant to cover any other issues other than

how long a police officer's paid lunch break would take. It therefore does not supersede the City's contractual right under Article 5 to establish "methods and processes by which said work is performed", particularly when the Association itself has agreed in Article 5 to cooperate in increasing "departmental efficiency and effectiveness", which is what this dispute is mainly about. All of these facts serve to distinguish GREENFIELD, supra, and to make it inapposite.

The Association alternatively argues that if the City did not violate the contract, it violated its duty to bargain under Sec. 111.70(3)(a)4 of MERA because the question of where lunches are to be taken represents a mandatory subject of bargaining.

There are several major problems with this claim.

The first centers on the contract language here which provides in Article 5 that the City retains the right to "establish methods and processes by which work is performed" and which goes on to add that the City retains "any and all rights concerning the management and direction of the Police Department. . ." This broad management rights clause hence fully supports what the City has done here.

Secondly, the deployment of police officers during their official pay status – even when on a paid lunch break – primarily relates to how public safety services are to be delivered and hence constitutes a permissive subject of bargaining. See BELOIT EDUCATION ASS'N V. WERC, 73 Wis. 2d 43, 242 N.W. 231 (1976). Indeed, it is difficult to see how any other management prerogative can be greater than the question of where police officers can best be assigned to protect a City's citizens.

The Association argues otherwise by citing BELOIT, supra, in support of its claim that: "The policy change relates primarily to an officers' enjoyment of lunch, and his safety while eating it." Any "enjoyment of lunch" is, however, outweighed by the overriding public safety need of not leaving patrol areas unattended and of assigning police officers to where they can best do their job when they are on their paid lunch break. As for "safety", this record is barren of any proof showing that the change herein has, in fact, impacted on officers' safety in any way or that it has impacted on their health. While Association witnesses Eberhardy, Fortune, Stout, Lelinski, Nisiewicz and DeBraska all testified that it did, none of them provided any proof of where that has ever occurred. Instead, they all testified about problems officers might have such as eating in dirty squad cars, eating alone when out on patrol and thereby exposing themselves to a greater safety risk, having access to toilet facilities, etc. Moreover, I credit the testimony of City witnesses Gielow and Meuler who testified that the change has not affected officer safety or health in the past and that it will not do so in the future. Finding of Fact No. 19 above relates this fact.

I therefore conclude that the City did not unlawfully refuse to bargain in violation of Sec. 111.70(3)(a)4, Stats. after it refused to bargain with the Association over its decision that patrol officers can no longer have their paid lunch breaks in district stations unless they are there on other business.

In light of all of the above, the Association's Complaint is therefore dismissed in its entirety.

Dated at Madison, Wisconsin this 17th day of August, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Amedeo Greco /s/
Amedeo Greco, Examiner

AAG/gjc
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