

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
TEAMSTERS UNION LOCAL NO. 695
To Initiate Arbitration Between Said Petitioner and
CITY OF MADISON (MADISON METRO TRANSIT SYSTEM)

Case 221
No. 58322
INT/ARB-8880

Decision No. 30009-B

Appearances:

Mr. Michael Deiters, Labor Relations Manager, City of Madison, City-County Building, Room 502, 210 Martin Luther King, Jr. Boulevard, Madison, Wisconsin 53710, appearing on behalf of the City of Madison.

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Andrea Hoeschen**, 1555 North Rivercenter Drive, Suite 202, P. O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of Teamsters Union Local No. 695.

**ORDER HOLDING INTEREST ARBITRATION PROCEEDING
IN ABEYANCE AND REOPENING INVESTIGATION**

On December 17, 1999, Teamsters Union Local No. 695 filed a petition with the Wisconsin Employment Relations Commission seeking interest arbitration pursuant to Sec. 111.70(4)(cm)6, Stats., of a dispute between Teamsters and the City of Madison as to the terms of a successor collective bargaining agreement. Commissioner Paul A. Hahn was assigned to investigate the petition and thereafter met with the parties on 14 occasions in an unsuccessful effort to mediate a voluntary settlement of the dispute. On November 9, 2000, Commissioner Hahn advised the Commission that the parties were at impasse and that he had received the parties' final offers as to all unresolved issues and a stipulation as to all matters on which the parties had reached an agreement.

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On November 17, 2000, the Wisconsin Employment Relations Commission issued its Findings of Fact, Conclusions of Law, Certification of Results of Investigation and Order Requiring Arbitration in this matter. The parties thereafter selected James Stern as the interest arbitrator and the Commission appointed Stern as arbitrator to issue a final and binding award, pursuant to Sec. 111.70(4)(cm)6 and 7, Stats., by selecting either the total final offer of Teamsters Union Local No. 695 or the City of Madison.

On August 23, 2001, the City filed a request asking the Commission to resolve a dispute that had arisen during the arbitration hearing before Arbitrator Stern as to the meaning of the City's offer. Teamsters opposed the request and the parties filed written argument, the last of which was received September 7, 2001.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

ORDER

1. The interest arbitration proceeding before Arbitrator Stern is hereby held in abeyance.
2. The investigation into the Teamsters' interest arbitration petition is reopened and both parties have the right to make any changes in their existing final offers.

Given under our hands and seal at the City of Madison, Wisconsin this 19th day of September, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Commissioner Paul A. Hahn did not participate.

City of Madison (Madison Metro Transit System)

**MEMORANDUM ACCOMPANYING
ORDER HOLDING INTEREST ARBITRATION PROCEEDING
IN ABEYANCE AND REOPENING INVESTIGATION**

POSITIONS OF THE PARTIES

The City

The City asserts that uncertainty and ambiguity presently exist in the interest arbitration process because the City and Teamsters have a difference of opinion as to the meaning of the City's final offer. The City alleges that its final offer does not provide for any wage increase beyond the 7.2% increase tentatively agreed upon by the parties while Teamsters argue that the City's offer proposes a 7.2% wage increase in addition to the 7.2% wage increase tentatively agreed upon. The City argues that the Commission should reopen the investigation into the Teamsters' interest arbitration petition so that this uncertainty and ambiguity can be resolved.

The City contends that the Commission's responsibility to administer the Municipal Employment Relations Act gives the Commission the authority to reopen the investigation to resolve the existing uncertainty. The City argues that the Commission should exercise that authority - just as it did in ITHACA SCHOOL DISTRICT, DEC. NO. 17461-B (WERC, 12/79) when it reopened an investigation to allow a union to resolve uncertainty as to its offer pending before an interest arbitrator.

The City argues that Commission resolution of the uncertainty as to the meaning of the City's offer is also consistent with avoiding future litigation as to whether the arbitrator "imperfectly executed" his authority. Thus, the City contends that reopening the investigation is consistent with the statutory policy of obtaining a final and binding resolution of the successor contract.

Given all of the foregoing, the City asks that the investigation be reopened so that it can clarify its final offer.

Teamsters

Teamsters argue that the Commission should reject the City's request.

Teamsters assert that the City is asking the Commission to resolve a dispute that can and should be decided by the arbitrator. Teamsters contend that the arbitrator can resolve any ambiguity in the parties' final offers by considering the parties' stipulations, the offers and evidence presented as to the statutory criteria established by Sec. 111.70(4)(cm)7r, Stats.

Teamsters argue the Commission's supervisory role over the interest arbitration process does not extend to directing the arbitrator in his decision-making before he issues an award. After the arbitrator issues his award, the Commission becomes a proper forum for the City to turn to if it believes the arbitrator exceeded his authority.

Given all of the foregoing, Teamsters urge the Commission to deny the City's request.

DISCUSSION

The Legislature has given the Commission the general responsibility of administering the Municipal Employment Relations Act. That responsibility specifically includes the administration of the interest arbitration provisions of Sec. 111.70(4)(cm)6, Stats.

In its administration of these interest arbitration provisions, the Commission has historically determined that the statutory "single final offer" requirement placed on the parties by Sec. 111.70(4)(cm)6, Stats., means that each party's final offer be sufficiently definite and certain for the arbitrator to evaluate it under the statutory criteria. MATC, DEC. NO. 19216 (WERC, 12/81); ITHACA SCHOOL DISTRICT, DEC. NO. 17461-B (WERC, 12/79). Where the Commission concludes that a submitted final offer is too indefinite and uncertain to allow appropriate statutory assessment by the arbitrator, we reopen the investigation so that the ambiguity may be resolved.

Given the foregoing, we reject the Teamsters' argument that we lack the authority to grant the City's request.

Here, the parties have presented the interest arbitrator with differing interpretations of the City's offer. Each interpretation is supported by plausible arguments, and the difference reflected by the competing interpretations is significant. 1/ Under these circumstances, the City's offer has become shrouded in uncertainty and ambiguity.

1/ The City's final offer included a wage increase proposal of 7.2%, but no proposed changes as to health insurance. The Union's final offer included a proposal for health insurance enhancement, but no request for any wage increase. In a separate listing of agreements to a successor contract that the parties had already reached, the parties reported a 7.2% wage increase. The City argues that its inclusion of a 7.2% wage increase in its final offer was not intended to be cumulative to the 7.2% wage increase to which agreement had already been reached, but was included (though not so identified) as merely a restatement of the wage agreement previously reached. Not so, says the Union, and argues that the 7.2% wage increase contained in the City's final offer should be read as being in addition to the identical percentage increase in wages to which the parties had earlier agreed.

The Union also argues that if the City did err in how it formatted its final offer, it was a unilateral mistake and the WERC should not be the guardian of a party that makes a unilateral mistake in articulating its offer. We quite agree that we are not the guardian of any party. However, as the statutorily designated administrators of the processes delineated in Sec. 111.70(4)(cm)6, Stats., we are the guardians of those processes.

Clearly our intervention to reopen the investigation is warranted. By resolving the uncertainty and ambiguity that currently attends the City's offer, the parties enable the arbitrator to apply the statutory criteria as may be appropriate, without the necessity of arbitral speculation or guesswork as to the meaning of the offer. 2/

2/ Only once before has this Commission been asked to intervene in the statutory interest arbitration process set forth in Sec. 111.70(4)(cm)6 where, as here, an impasse has been certified and final offers transmitted to the arbitrator, but prior to an award being issued. ITHACA SCHOOL DISTRICT, SUPRA. However, despite the rarity of this request, relief is warranted so that the terms of Sec. 111.70(4)(cm)6, Stats., may be carried out properly.

We do not doubt the ability of the interest arbitrator to select which interpretation of the City's offer he prefers or to him makes the greatest sense. Unfortunately, we do not perceive any legal way for him to do so. For while it may be permissible for an arbitrator to interpret and restate an offer to achieve definiteness, an arbitrator is not permitted to modify a final offer. 3/

3/ LACROSSE PROFESSIONAL POLICE ASSOCIATION v. CITY OF LACROSSE, 212 WIS.2D 90, 101, (1997).

Here, no matter which competing interpretation is chosen by the arbitrator, the losing party would be given a basis for seeking to attack the award on the grounds that by selecting an interpretation that modified the City's offer, the arbitrator exceeded his powers and imperfectly executed them. 4/ By acting now, we avoid placing the arbitrator and the parties in such a "no-win" posture and eliminate the inevitable risk of subsequent litigation over the legitimacy of the arbitration award.

4/ See LACROSSE, SUPRA, and ERC 32.16(1)(d), which parallels Sec. 788.10(1)(d), Stats.

Based on all the foregoing and consistent with our result and rationale in ITHACA SCHOOL DISTRICT, SUPRA, we conclude that the investigation should be reopened so that the uncertainty, indefiniteness and ambiguity of the City's offer can be resolved.

Dated at Madison, Wisconsin this 19th day of September, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Commissioner Paul A. Hahn did not participate.