

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
**OFFICE & PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION, LOCAL 35**

To Initiate Arbitration Between Said Petitioner and
OZAUKEE COUNTY

Case 56
No. 61845
INT/ARB-9802

Decision No. 30561-B

In the Matter of the Petition of
OZAUKEE COUNTY
To Initiate Arbitration Between Said Petitioner and
OZAUKEE COUNTY HIGHWAY EMPLOYEES ASSOCIATION

Case 58
No. 61962
INT/ARB-9845

Decision No. 30562-B

Appearances:

Michael, Best & Friedrich, by **Attorney Eric H. Rumbaugh**, 100 East Wisconsin Avenue, Suite 3300, Milwaukee, Wisconsin 53202-4108, appearing on behalf of Ozaukee County.

Shneidman, Hawks & Ehlke, S.C., by **Attorney Jeffrey P. Sweetland**, 700 West Michigan, Suite 500, P. O. Box 442, Milwaukee, Wisconsin 53201-0442 and **Ms. Judy Burnick**, Office Manager, Office & Professional Employees International Union Local 35, North 124th Street, Butler, Wisconsin 53007, appearing on behalf of Ozaukee County Highway Employees Association.

Murphy, Gillick, Wicht & Prachthauser, by **Attorney George Graf**, Blue Mound Centre, 22370 West Bluemound Road, Suite 204, Waukesha, Wisconsin 53186, appearing on behalf of Office and Professional Employees International Union, Local 35.

Dec. No. 30561-B
Dec. No. 30562-B

ORDER

On July 9, 2003, we issued Findings of Fact, Conclusions of Law and Order in the above matters wherein we denied a request that the interest arbitration proceedings be interrupted pending resolution of prohibited practice complaints.

By letter dated July 11, 2003, Ozaukee County asked that we proceed to issue an order requiring that Cases 56 and 58 proceed to interest arbitration.

By letter dated July 14, 2003, the Ozaukee County Highway Employees Association requested the following action in Case 58:

In light of the Commission's Decision No. 30562-A, issued in the above-referenced interest arbitration proceeding on July 9, 2003 (which our office only received this morning), the Association requests that the matter be remanded back to Mr. Emery for further mediation and investigation.

The Commission has now instructed us that we may not condition further movement in our bargaining position on the elimination of the County's bad faith implementation of its health insurance proposals, for purposes of final offers in interest arbitration. Therefore, the Association is prepared to discuss changes in its last offer and believes that one or more additional mediation/investigation sessions with Mr. Emery will narrow the issues and thus speed the process along.

Certification of final offers is thus premature at this time.

By letter dated July 17, 2003, the County opposed any further delay in either Case 56 or Case 58 as follows:

We are in receipt of your correspondence date (sic) July 14, 2003 regarding the above matters. In his correspondence dated July 14, 2003, counsel for the Highway Employees Association has requested "additional mediation/investigation sessions" with Mr. Emery. On behalf of Ozaukee County, we reject this suggestion. Final offers have been submitted. Impasse exists. There is no reason to delay interest arbitration any further. We insist that selection of an interest arbitrator begin forthwith.

By letter dated July 22, 2003, Office and Professional Employees International Union, Local 35 made the following request in Case 56:

We have reviewed the Commission's decision of July 9 and the subsequent letters of Mr. Sweetland and Mr. Rumbaugh.

Although we will of course comply with the Commission's ruling, we believe there is merit to Mr. Sweetland's suggestion that additional mediation/investigation sessions would be beneficial.

We believe such action would be particularly prudent in view of pending legislation which may dramatically impact on the critical issue of health insurance. In addition, Local 35 and the County have met June 4. As a result, there are several matters which need to be clarified before the formal arbitration procedure begins.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

ORDER

The requests to reopen the investigations are denied.

Given under our hands and seal at the City of Madison, Wisconsin, this 5th day of August, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

Ozaukee County

MEMORANDUM ACCOMPANYING ORDER

The Association Request (Case 58)

As reflected earlier herein, the Association asks that the investigation be reopened for additional mediation and that it be allowed to modify its final offer should it chose to do so. The County opposes the Association request.

ERC 32.10(3) provides that once the investigation is closed, final offers may only be modified with the consent of the other party.

The Association request is prompted by its receipt of our July 9, 2003 decision holding that the interest arbitration proceedings are not interrupted by the pendency of the Association's prohibited practice complaint. The Association contends that now that it knows the answer to this legal question, it "is prepared to discuss changes in its last offer. . . ."

As recited in Finding of Fact 5 of our July 9, 2003 decision, on March 24, 2003, Investigator Emery advised us through his Report and Notice that he had closed his investigation of the interest arbitration petition and recommended to us that the dispute proceed to interest arbitration for resolution. In effect, he thereby conveyed to us his judgment that as of March 24, 2003, he had no reasonable basis for concluding that further mediation would produce a voluntary settlement as to the terms of a successor agreement and that, as of that date, neither side wished to make any changes to its final offer. SEE ERC 32.09(2).

As evidenced by the above, the end of the interest arbitration investigation process is, of necessity, based on the investigator's judgment as to the status of the bargaining/mediation/investigation process at a specific point in time. Although bargaining/mediation/investigation are dynamic processes that evolve and change based on ongoing events and circumstances, the potential for or the reality of change in the future does not require that the investigation process continue indefinitely. Thus, while it is appropriate for the investigator to consider the potential impact of future events when deciding whether it is reasonable to believe that further mediation will produce a voluntary settlement, the investigator is also guided by the charge contained in Sec. 111.70(6), Stats., to the effect that "the parties should have available to them a fair, **speedy**, effective . . . procedure for settlement . . ." (emphasis added) when collective bargaining fails to produce a settlement. Therefore, particularly where, as here, the parties had exchanged final offers and one party was urging him to allow the dispute to proceed to interest arbitration, the investigator has the obligation to assess whether, at a particular appropriate point in time, the investigation should be closed with a recommendation that the dispute proceed to interest arbitration.

Given the foregoing, the question before us is whether we have a persuasive basis for concluding that Investigator Emery was wrong in his assessment of the status of the parties' bargaining as of March 24, 2003. We conclude we do not have such a basis. The parties' dispute as to the impact of the prohibited practice proceedings was known to Investigator Emery before he closed the investigation. We have no evidence that Investigator Emery failed

to consider the potential outcomes of that dispute when he assessed the question of whether to close the investigation. Therefore, the fact that the Association's legal position was not sustained in our July 9, 2003 decision does not provide a persuasive basis for reopening the investigation and allowing the Association to change its final offer. Therefore, we will be issuing the appropriate Order directing that this dispute proceed further in the interest arbitration process.

It is worth emphasizing that our decision does not preclude the parties from reaching a voluntary settlement prior to receipt of an interest arbitrator's decision, from agreeing to allow changes to be made in one or both final offers, or from jointly requesting additional mediation services.

The Local 35 Request (Case 56)

The Local 35 request largely parallels that of the Association. We reject the Local 35 request based on the same rationale expressed above.

To the extent that Local 35 specifically references pending legislation, we note, as we did above as to the outcome of the prohibited practice complaint impact litigation, that such matters can play a role in the investigator's decision as to whether it is reasonable to conclude that additional mediation will produce a settlement. We have no basis for concluding that Investigator Emery failed to give whatever consideration was appropriate to any such pending legislation when deciding whether the investigation should be closed.

Local 35 also references recent meetings between the County and Local 35. As noted above, our decision here does not prevent the parties from voluntarily settling the dispute or voluntarily narrowing its scope by partially resolving issues and making the appropriate adjustments in their final offers prior to the arbitration hearing.

Dated at Madison, Wisconsin, this 5th day of August, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

