

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

In the Matter of the Petition of
OZAUKEE COUNTY HIGHWAY EMPLOYEES ASSOCIATION

To Initiate Arbitration Between Said Petitioner and
OZAUKEE COUNTY

Case 58
No. 61962
INT/ARB-9845

Decision No. 30562

Appearances:

Murphy, Gillick, Wicht & Prachthauser, by **Attorney George F. Graf**, 300 North Corporate Drive, Suite 260, Brookfield, Wisconsin 53045, appearing on behalf of Office and Professional Employees International Union, Local 35.

Michael, Best & Friedrich, by **Attorney Robert Mulcahy**, 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, appearing on behalf of the Ozaukee County Highway Employees Association.

Dec. No. 30562

ORDER

On February 10, 2003, the Office and Professional Employees Union, Local 35 filed a request that the Wisconsin Employment Relations Commission review a Wisconsin Employment Relations Commission investigator's determination in Case 56 that Local 35 and Ozaukee County had reached an impasse in their contract negotiations.

On February 10, 2003, the Ozaukee County Highway Employees Association filed the same request in Case 58.

Ozaukee County opposes the requests.

We have considered the matter and conclude that the requests are not ripe for our consideration.

NOW, THEREFORE, it is

ORDERED

The requests in Cases 56 and 58 are held in abeyance.

Given under our hands and seal at the City of Madison, Wisconsin, this 26th day of February, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Ozaukee County

MEMORANDUM ACCOMPANYING ORDER

Section 111.70(4)(cm)6.am., Stats. provides in pertinent part as follows:

am. Upon receipt of a petition to initiate arbitration, the commission shall make an investigation, with or without a formal hearing, to determine whether arbitration should be commenced. **If in determining whether an impasse exists the commission finds** that the procedures set forth in this paragraph have not been complied with and such compliance would tend to result in a settlement, it may order such compliance before ordering arbitration. The validity of any arbitration award or collective bargaining agreement shall not be affected by failure to comply with such procedures. **Prior to the close of the investigation each party shall submit in writing to the commission its single final offer** containing its final proposals on all issues in dispute that are subject to interest arbitration under this subdivision or under subd. 5s. in collective bargaining units to which subd. 5s. applies. If a party fails to submit a single, ultimate final offer, the commission shall close the investigation based on the last written position of the party. The municipal employer may not submit a qualified economic offer under subd. 5s. after the close of the investigation. Such final offers may include only mandatory subjects of bargaining, except that a permissive subject of bargaining may be included by a party if the other party does not object and shall then be treated as a mandatory subject. No later than such time, the parties shall also submit to the commission a stipulation, in writing, with respect to all matters which are agreed upon for inclusion in the new or amended collective bargaining agreement. **The commission, after receiving a report from its investigator and determining that arbitration should be commenced, shall issue an order requiring arbitration** and immediately submit to the parties a list of 7 arbitrators. (emphasis added)

Consistent with Sec. 111.70(4)(cm)6.am., Stats., ERC 32.09(2) and 32.13(1) provide in pertinent part as follows:

(2) INFORMAL INVESTIGATION PROCEDURE. The commission or its agent shall set a date, time and place for the conduct of the informal investigation and shall notify the parties thereof in writing. The informal investigation may be adjourned or continued as the commission or its agent deems necessary. During

said investigation the commission or its agent may meet jointly or separately with the parties for the purposes described in sub. (1). **Prior to the close of the investigation the investigator shall obtain in writing the final offers of the parties on the issues in dispute and a stipulation in writing on all matters agreed upon to be included in the new or amended collective bargaining agreement.** The investigator shall also obtain each party's written position regarding authorization of inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted by the commission. At the same time the parties shall exchange copies of their final offers, and shall retain copies of the stipulation of agreed upon matters. If at time of the exchange of final offers or during any additional time permitted by the investigator, no objection is raised that either final offer contains a proposal or proposals relating to non-mandatory subjects of bargaining, the commission agent shall serve a notice in writing upon the parties indicating the investigation is closed. **The commission or its agent may not close the investigation until the commission or its agent is satisfied that neither party, having knowledge of the content of the final offer of the other party, would amend any proposal contained in its final offer and that both final offers conform to the requirements of s. ERC 32.10(2).** Following the close of the investigation the commission agent shall report the findings to the commission, either orally or in writing, as the commission may direct, and at the same time transmit to the commission the final offers and the stipulation received from the parties. (emphasis added)

ERC 32.13 Certification of results of Investigation or hearing, or certification based on stipulation. (1) WHEN ISSUED. After consideration of either the report of the commission or its agent following the conduct of the investigation or formal hearing, or after the consideration of the parties' stipulation to waive investigation or formal hearing, the commission shall issue a certification determining whether there has been substantial compliance with s. 111.70(4)(cm), Stats., and whether the parties are deadlocked. If the commission determines that there has not been substantial compliance with the requirements of s. 111.70(4)(cm), Stats., it may order compliance if it would tend to result in a settlement. (emphasis added except for title)

As evidenced by the foregoing, it is the Commission that determines whether the parties are at impasse. Section 111.70(4)(cm)6.am, Stats.; ERC 32.13(1). In making its determination, the Commission considers the investigator's Report that is filed with the Commission and the parties to the dispute. Section 111.70(4)(cm)6.am, Stats.; ERC 32.13(1). The investigator's Report is not filed until the investigation into the interest arbitration petition

is closed. Section 111.70(4)(cm)6.am., Stats.; ERC 32.09(2). The investigation cannot be closed until the final offer exchange is completed and neither party wishes to make any further modification to its final offer. ERC 32.09(2).

Here, the final offer exchange has not been completed. The investigation has not been closed. The investigator's Report has not been received. Therefore, we conclude that the issue raised by Local 35 and the Association is not ripe for our consideration. When and if we receive a Report from the investigator in either or both cases, we will then consider the merits of the request(s).

Dated at Madison, Wisconsin, this 26th day of February, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

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